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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 3

RIN 0510-AA04

#### Civil Monetary Penalty Inflation Adjustment for 2018

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Department of Agriculture's (USDA) civil monetary penalty regulations by making inflation adjustments as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** Effective March 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Heather Self, Esq., OGC, USDA, Room 3311-S, 1400 Independence Avenue SW, Washington, DC 20250-1400, (202) 720-5840.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), to improve the effectiveness of CMPs and to maintain their deterrent effect. The 2015 Act requires agencies to adjust for inflation annually.

Previously, the Inflation Adjustment Act required agencies to adjust CMP levels every 4 years based on the percentage by which the Consumer Price Index (CPI) for the month of June of the prior calendar year exceeded the CPI for the month of June of the calendar year during which the last adjustment was made. The Inflation Adjustment Act also capped the increase for each adjustment at 10

percent and rounded the adjustment based on the size of the penalty (for example, multiple of \$10 in the case of penalties less than or equal to \$100). The rounding process meant that penalties would often not be increased at all if the inflation factor was not large enough. Furthermore, the cap on increases of 10 percent in tandem with the rounding meant that the formula over time caused penalties to lose value relative to total inflation. The 2015 Act updates these requirements by prescribing that agencies make annual adjustments for inflation based on the CPI for the month of October and round to the nearest dollar after an initial adjustment.

In order to eliminate the inconsistent changes caused by the prior method, the 2015 Act reset the inflation adjustment by excluding prior inflationary adjustments under the Inflation Adjustment Act, which contributed to a decline in the real value of penalty levels. To do this, the 2015 Act provided that the initial adjustment would be the percentage by which the CPI for the month of October 2015 exceeded that of the month of October of the calendar year during which the amount of the CMP was originally established or otherwise adjusted under a provision of law other than the Inflation Adjustment Act. While the 2015 Act does not provide a cap on adjustments going forward, the initial adjustment under the 2015 Act did limit large CMP increases by providing that no initial adjustments could exceed 150 percent of the amount of the CMP as of the date the 2015 Act was enacted, November 2, 2015.

USDA's initial adjustment under the 2015 Act was published in the **Federal Register** on December 5, 2017 at 82 FR 57331. This final rule constitutes USDA's annual inflation adjustment for 2018.

In addition, this rule moves the CMPs previously administered by the former Grain Inspection, Packers and Stockyards Administration (GIPSA) to the Agricultural Marketing Service (AMS). GIPSA's CMPs previously were codified at 7 CFR 3.91(b)(6); they now will be codified with AMS's CMPs at 7 CFR 3.91(b)(1). GIPSA's section of the regulations at 7 CFR 3.91(b)(6) will become a reserved section. This move is in accordance with the reorganization announced by the Secretary of

Agriculture on November 14, 2017 via Secretary's Memorandum Number 1076-18, which eliminated GIPSA as a standalone agency within USDA, revoked the delegations of authority to the Administrator of GIPSA found at 7 CFR 2.81, and delegated to the Administrator of AMS those same authorities found at 7 CFR 2.81.

Secretary's Memorandum Number 1076-18 also moved responsibility for the United States Warehouse Act and its associated CMP, see 7 U.S.C. 254, from the Farm Service Agency (FSA) to AMS. In accordance with the Secretary's Memorandum this rule moves the United States Warehouse Act CMP previously codified with FSA's CMPs in 7 CFR 3.91(b)(9) to be codified with AMS' CMPs in 7 CFR 3.91(b)(1). Additionally, as the United States Warehouse Act CMP was the only CMP codified in FSA's section. Accordingly, FSA's section of the regulations at 7 CFR 3.91(b)(9) will become a reserved section.

Lastly, this rule amends the maximum monetary penalty amounts imposed by the Animal and Plant Health Inspection Service (APHIS) for violating the Endangered Species Act of 1973 (ESA) and the Lacey Act Amendments of 1981 (Lacey Act), to be consistent with the inflationary adjustments established by the Department of the Interior, Fish and Wildlife Service (FWS). APHIS and FWS have joint jurisdiction over ESA and Lacey Act provisions that involve the importation and exportation of plants, and any violation thereof will be subject to the same maximum penalty, regardless of which agency institutes an enforcement action.

##### II. CMPs Affected by This Final Rule

Several USDA agencies administer laws that provide for the imposition of CMPs being adjusted by this final rule. Those agencies are:

- (1) Agricultural Marketing Service;
- (2) Animal and Plant Health Inspection Service;
- (3) Food and Nutrition Service;
- (4) Food Safety and Inspection Service;
- (5) Forest Service;
- (6) Federal Crop Insurance Corporation;
- (7) Rural Housing Service,
- (8) Commodity Credit Corporation, and
- (9) Office of the Secretary.

The CMPs in this final rule are listed according to the applicable administering agency. The CMPs previously administered by GIPSA and FSA are now found in the section applicable to AMS.

### III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures contained in 5 U.S.C. 553. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically the rulemaking comports with and is consistent with the statutory authority required by Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, as amended, with no issue of policy discretion. Accordingly, we have determined that opportunity for prior comment is unnecessary and contrary to the public interest, and we are issuing this revised regulation as a final rule that will apply to all future cases.

### IV. Procedural Requirements

#### *Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this regulatory action does not meet the criteria for significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

As indicated above, the provisions of this final rulemaking contain inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The great majority of individuals, organizations, and entities participating in the programs affected by this regulation do not engage in prohibited activities and practices that would result in civil monetary penalties being incurred. Accordingly, we believe that any aggregate economic impact of this revised regulation will be minimal, affecting only the limited number of program participants that may engage in prohibited behavior in violation of the statutes.

#### *Regulatory Flexibility Act*

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

#### *Paperwork Reduction Act*

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

#### List of Subjects in 7 CFR Part 3

Administrative practice and procedure, Debt management, Penalties.

For the reasons set forth in the preamble, amend 7 CFR part 3 as follows:

### PART 3—DEBT MANAGEMENT

#### Subpart I—Adjusted Civil Monetary Penalties

■ 1. The authority citation for part 3, subpart I, continues to read as follows:

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

■ 2. Revise § 3.91(a)(1) and (2) and (b) to read as follows:

#### § 3.91 Adjusted civil monetary penalties.

(a) \* \* \*

(1) *Adjustments.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b) of this section, to take account of inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, as amended.

(2) *Timing.* Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section applies only to violations occurring after March 14, 2018.

\* \* \* \* \*

(b) *Penalties*—(1) *Agricultural Marketing Service.* (i) Civil penalty for improper record keeping codified at 7 U.S.C. 136i–1(d), has: A maximum of \$923 in the case of the first offense, and a minimum of \$1,795 in the case of subsequent offenses, except that the penalty will be less than \$1,795 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of \$5,029.

(iii) Civil penalty for violation of the licensing requirements under the Perishable Agricultural Commodities

Act, codified at 7 U.S.C. 499c(a), has a maximum of \$1,605 for each such offense and not more than \$401 for each day it continues, or a maximum of \$401 for each offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum penalty of \$3,209 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C. 586, has a minimum of \$147 and a maximum of \$14,665.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of \$281 and a maximum of \$28,061.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of \$2,806. Each day the violation continues is a separate violation.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of \$281.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of \$96 and a maximum of \$1,913.

(x) Civil penalty for failure to collect any assessment or fee for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of \$2,806.

(xi) Civil penalty for failure to pay, collect, or remit any assessment or fee for a violation of a program under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of \$1,257 and a maximum of \$12,570.

(xii) Civil penalty for failure to obey a cease and desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of \$1,257. Each day the violation continues is a separate violation.

(xiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of \$1,454 and a maximum of \$14,544.

(xiv) Civil penalty for failure to obey a cease and desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of \$1,454. Each day the violation continues is a separate violation.

(xv) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of \$11,346.

(xvi) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of \$2,806.

(xvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum of \$1,320 and a maximum of \$13,205.

(xviii) Civil penalty for failure to obey a cease and desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of \$1,320. Each day the violation continues is a separate violation.

(xix) Civil penalty for violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of \$2,442.

(xx) Civil penalty for pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum of \$752 and a maximum of \$7,520.

(xxi) Civil penalty for failure to obey a cease and desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of \$752. Each day the violation continues is a separate violation.

(xxii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of \$2,269.

(xxiii) Civil penalty for failure to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of \$1,135. Each day the violation continues is a separate violation.

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

a minimum of \$1,135 and a maximum of \$11,346.

(xxv) Civil penalty for failure to obey a cease and desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of \$1,135. Each day the violation continues is a separate violation.

(xxvi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of \$1,848 and a maximum of \$18,477.

(xxvii) Civil penalty for failure to obey a cease and desist order under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of \$1,848.

(xxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of \$898 and a maximum of \$8,977.

(xxix) Civil penalty for failure to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(e), has a maximum of \$898. Each day the violation continues is a separate violation.

(xxx) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of \$898 and a maximum of \$8,977.

(xxxi) Civil penalty for failure to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of \$898. Each day the violation continues is a separate violation.

(xxxii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(c)(1)(A), has a maximum of \$1,848.

(xxxiii) Civil penalty for failure to obey a cease and desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of \$9,239. Each day the violation continues is a separate violation.

(xxxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990,

codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of \$898 and a maximum of \$8,977, or in the case of a violation that is willful, codified at 7 U.S.C.

6411(c)(1)(B), has a minimum of \$17,952 and a maximum of \$179,522.

(xxxv) Civil penalty for failure to obey a cease and desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of \$9,239. Each day the violation continues is a separate violation.

(xxxvi) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(c), has a maximum of \$17,952.

(xxxvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(c)(1)(A)(i), has a minimum of \$847 and a maximum of \$8,464.

(xxxviii) Civil penalty for failure to obey a cease and desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of \$8,464. Each day the violation continues is a separate violation.

(xxxix) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of \$1,650.

(xl) Civil penalty for failure to obey a cease and desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of \$824. Each day the violation continues is a separate violation.

(xli) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of \$1,558 and a maximum of \$15,582 for each violation.

(xlii) Civil penalty for failure to obey a cease and desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of \$1,558 and a maximum of \$15,582. Each day the violation continues is a separate violation.

(xliii) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1)(A)(i), has a maximum of \$1,558 for each violation.

(xlv) Civil penalty for failure to obey a cease and desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of \$7,791. Each day the violation continues is a separate violation.

(xlvi) Civil penalty for violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of \$780 and a maximum of \$7,791 for each violation.

(xlvii) Civil penalty for failure to obey a cease and desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of \$780. Each day the violation continues is a separate violation.

(xlviii) Civil penalty for a violation of an order or regulation under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of \$1,558 for each violation.

(xlviii) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of \$8,977 for each violation.

(xlix) Civil penalty for violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of \$1,417 and a maximum of \$14,177 for each violation.

(l) Civil penalty for failure to obey a cease and desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of \$14,177 for each offense. Each day the violation continues is a separate violation.

(li) Civil penalty for violation of certain provisions of the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(a)(1), has a maximum of \$14,665 for each violation.

(lii) Civil penalty for failure to obey a cease and desist order under the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(g)(3), has a maximum of \$14,665 for each violation. Each day the violation continues is a separate violation.

(liii) Civil penalty for failure to obey an order of the Secretary issued pursuant to the Dairy Product Mandatory Reporting program, codified at 7 U.S.C. 1637b(c)(4)(D)(iii), has a maximum of \$14,177 for each offense.

(liv) Civil penalty for a willful violation of the Country of Origin Labeling program by a retailer or person

engaged in the business of supplying a covered commodity to a retailer, codified at 7 U.S.C. 1638b(b)(2), has a maximum of \$1,139 for each violation.

(lv) Civil penalty for violations of the Dairy Research Program, codified at 7 U.S.C. 4535 & 4510(b), has a maximum of \$2,442 for each violation.

(lvi) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of \$28,061.

(lvii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of \$1,913 and not more than \$96 for each day the violation continues.

(lviii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of \$1,913 and not more than \$96 for each day the violation continues.

(lix) Civil penalty for a stockyard owner, livestock market agency, or dealer, who engages in or uses any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock, codified at 7 U.S.C. 213(b), has a maximum of \$28,061.

(lx) Civil penalty for a stockyard owner, livestock market agency, or dealer, who knowingly fails to obey any order made under the provisions of 7 U.S.C. 211, 212, or 213, codified at 7 U.S.C. 215(a), has a maximum of \$1,913.

(lxi) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b-2(b), has a maximum of \$81,633.

(lxii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of \$274,235.

(lxiii) Civil penalty for failure to comply with certain provisions of the U.S. Warehouse Act, codified at 7 U.S.C. 254, has a maximum of \$35,440 per violation if an agricultural product is not involved in the violation.

(2) *Animal and Plant Health Inspection Service.* (i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of \$96 and a maximum of \$1,913.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$11,390, and knowing failure to obey a cease and

desist order has a civil penalty of \$1,708.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspection by the Department, codified at 7 U.S.C. 2279e(a), has a maximum of \$14,177.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of \$28,061.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in the PPA, codified at 7 U.S.C. 7734(b)(1), has a maximum of the greater of: \$70,881 in the case of any individual (except that the civil penalty may not exceed \$1,417 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), \$354,402 in the case of any other person for each violation, \$569,468 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,138,937 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in the PPA that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person (except as provided in 7 U.S.C. 8309(d)) that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a maximum of the greater of: \$68,027 in the case of any individual, except that the civil penalty may not exceed \$1,360 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, \$340,131 in the case of any other person for each violation, \$569,468 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,138,937 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain

or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of \$340,131 in the case of an individual and \$680,262 in the case of any other person.

(viii) Civil penalty for violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of \$5,612.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of \$10,969.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d) (other than regulations relating to record keeping or filing reports), (f), or (g), as set forth at 16 U.S.C. 1540(a)(1), has a maximum of \$51,302 for each violation.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation under the Endangered Species Act of 1973, as set forth at 16 U.S.C. 1540(a)(1), has a maximum of \$24,625 for each violation.

(xii) Civil penalty for violating, with respect to terrestrial plants, the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as set forth at 16 U.S.C. 1540(a)(1), has a maximum of \$1,296 for each violation.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of \$165 and a maximum of \$824.

(xiv) Civil penalty for a violation of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. 1901 note, and its implementing regulations in 9 CFR part 88, as set forth in 9 CFR 88.6, has a maximum of \$5000. Each horse transported in violation of Part 88 is a separate violation.

(xv) Civil penalty for knowingly violating section 3(d) or 3(f) of the Lacey Act Amendments of 1981, or for

violating any other provision provided that, in the exercise of due care, the violator should have known that the plant was taken, possessed, transported, or sold in violation of any underlying law, treaty, or regulation, has a maximum of \$25,928 for each violation, as set forth at 16 U.S.C. 3373(a)(1) (but if the plant has a market value of less than \$350, and involves only the transportation, acquisition, or receipt of a plant taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty shall not exceed the maximum provided for violation of said law, treaty, or regulation, or \$25,928, whichever is less).

(xvi) Civil penalty for violating section 3(f) of the Lacey Act Amendments of 1981, as set forth at 16 U.S.C. 3373(a)(2), has a maximum of \$648.

(3) *Food and Nutrition Service.* (i) Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of \$113,894 for each violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of \$41,042 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$73,906.

(iii) Civil penalty for the sale of firearms, ammunitions, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of \$36,953 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$73,906.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate, or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of \$173,951,364.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$15,041 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$60,161.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosive, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$15,041 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$60,161.

(4) *Food Safety and Inspection Service.* (i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of \$8,977 for each violation.

(ii) [Reserved]

(5) *Forest Service.* (i) Civil penalty for willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of \$923,831 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of \$138,575 per violation.

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of \$92,383 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of \$923,831.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of \$20,191.

(6) [Reserved]

(7) *Federal Crop Insurance Corporation.* (i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to any insurance plan or policy that is offered under the authority of the Federal Crop

Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified at 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: the amount of the pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or \$11,984.

(ii) [Reserved]

(8) *Rural Housing Service.* (i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified at 42 U.S.C. 1490p(e)(2), has a maximum of \$196,387 in the case of an individual, and a maximum of \$1,963,870 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Housing Act of 1949, codified at 42 U.S.C. 1490s(a)(2), has a maximum of \$35,440.

(iii) Civil penalty under section 543b of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights statutes and regulations, codified at 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: twice the damages the Department, guaranteed lender, or project that is secured for a loan under Title V, suffered or would have suffered as a result of the violation; or \$70,881 per violation.

(9) [Reserved]

(10) *Commodity Credit Corporation.* (i) Civil penalty for willful failure or refusal to furnish information, or willful furnishing of false information under of section 156 of the Federal Agricultural Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$15,582 for each violation.

(ii) Civil penalty for willful failure or refusal to furnish information or willful furnishing of false data by a processor, refiner, or importer of sugar, syrup and molasses under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$15,582 for each violation.

(iii) Civil penalty for filing a false acreage report that exceeds tolerance under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$15,582 for each violation.

(iv) Civil penalty for knowingly violating any regulation of the Secretary of the Commodity Credit Corporation

pertaining to flexible marketing allotments for sugar under section 359h(b) of the Agricultural Adjustment Act of 1938, codified at 7 U.S.C. 1359hh(b), has a maximum of \$11,390 for each violation.

(v) Civil penalty for knowing violation of regulations promulgated by the Secretary pertaining to cotton insect eradication under section 104(d) of the Agricultural Act of 1949, codified at 7 U.S.C. 1444a(d), has a maximum of \$14,031 for each offense.

(11) *Office of the Secretary.* (i) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent claim as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(1), has a maximum of \$11,182.

(ii) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent written statement as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(2), has a maximum of \$11,182.

Dated: March 6, 2018.

**Stephen Censky,**

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

[FR Doc. 2018-04832 Filed 3-13-18; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 983

[Docket No. AMS-SC-17-0048; SC17-983-2 FIR]

#### **Pistachios Grown in California, Arizona, and New Mexico; Decreased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture adopts as final, without change, an interim rule that implemented a recommendation from the Administrative Committee for Pistachios (Committee) to decrease the assessment rate established for the 2017-18 and subsequent production years and administrative revisions to the subpart headings to bring the language into conformance with the Office of Federal Register requirements.

**DATES:** Effective March 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** Peter Sommers, Marketing Specialist, or

Jeffrey Smutny, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or Email: [PeterR.Sommers@ams.usda.gov](mailto:PeterR.Sommers@ams.usda.gov) or [Jeffrey.Smutny@ams.usda.gov](mailto:Jeffrey.Smutny@ams.usda.gov).

Small businesses may request information on complying with this and other marketing order regulations by viewing a guide at the following website: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>; or by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 983, both as amended (7 CFR part 983), regulating the handling of pistachios grown in California, Arizona, and New Mexico. Part 983 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of growers and handlers of pistachios operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Under the Order, pistachio handlers in California, Arizona, and New Mexico are subject to assessments, which provide funds to administer the Order. Assessment rates issued under the Order are intended to be applicable to all assessable pistachios for the entire production year, and continue indefinitely until amended, suspended, or terminated. The Committee's