I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) requires the head of each Federal agency to periodically adjust for inflation the minimum and maximum amounts of civil monetary penalties provided by law within the jurisdiction of that agency. A 2015 amendment to the FCPIAA required agencies to make an initial “catch-up” adjustment to its civil monetary penalties effective no later than August 1, 2016. For every year thereafter, the FCPIAA, as amended, requires agencies to make annual adjustments for inflation, with guidance from the Director of the Office of Management and Budget.

III. Annual Inflation Adjustment for Commodity Exchange Act Civil Monetary Penalties

A. Methodology

The FCPIAA annual inflation adjustment, in the context of the CFTC’s CMPs, is determined by increasing the maximum penalty by a “cost-of-living adjustment” rounded to the nearest multiple of one dollar. Annual inflation adjustments are based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI–U) preceding the date of the adjustment, and the prior year’s October CPI–U. In this case, the October 2020 CPI–U (260.388)/October 2019 CPI–U (257.346) = 1.01182. In order to complete the 2021 annual adjustment, the CFTC must multiply each of its most recent CMP amounts by the multiplier, 1.01182, and round to the nearest dollar.

B. Civil Monetary Penalty Adjustments

Applying the FCPIAA annual inflation adjustment methodology results in the following amended CMPs:

\[
\text{Adjusted CMP} = \text{Original CMP} \times 1.01182
\]

For the relevant CMPs within the Commission’s jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules, regulations and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

DATES: This rule is effective on February 2, 2021, and is applicable to penalties assessed after January 15, 2021.

FOR FURTHER INFORMATION CONTACT: Edward J. Riccobene, Associate Chief Counsel, Division of Enforcement, at (202) 418–5327 or ericcobene@cftc.gov.

SUPPLEMENTARY INFORMATION:
Federal Register / Vol. 86, No. 20 / Tuesday, February 2, 2021 / Rules and Regulations 7803

The FCPIAA provides that any increase under the FCPIAA in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect. Thus, the new CMP amounts established by this rulemaking shall apply to penalties assessed after January 15, 2021, for violations that occurred on or after November 2, 2015, the effective date of the FCPIAA amendment requiring annual adjustments, the 2015 Act.

IV. Administrative Compliance

A. Notice Requirement

The FCPIAA specifically exempted from the Administrative Procedure Act (APA) the rulemakings required to implement annual inflation adjustments. 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. The Commission further notes that the notice and comment procedures of the APA do not apply to this rulemaking because the Commission is acting herein pursuant to statutory language that mandates that the Commission act in a nondiscretionary matter.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires agencies with rulemaking authority to consider the impact of certain of their rules on small businesses. A regulatory flexibility analysis is only required for rules for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) or any other law. Because, as discussed above, the Commission is not obligated by section 553(b) or any other law to publish a general notice of proposed rulemaking with respect to the revisions being made to Rule § 143.8, the Commission additionally is not obligated to conduct a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), which imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. This rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

D. Consideration of Costs and Benefits

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before issuing a new regulation. Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission believes that benefits of this rulemaking greatly outweigh the costs, if any. As the Commission understands, the statutory provisions by which it is making cost-of-living adjustments to the CMPs in Rule § 143.8 were enacted to ensure that CMPs do not lose their deterrence value because of inflation. An analysis of the costs and benefits of these adjustments were made before enactment of the statutory provisions under which the Commission is operating, and limit the discretion of the Commission to the extent that there are no regulatory choices the Commission could make that would supersede the pre-enactment analysis with respect to the five factors enumerated in Section 15(a) of the CEA, or any other factors.

List of Subjects in 17 CFR Part 143

Civil monetary penalties, Claims.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends part 143 of chapter I of title 17 of the Code of Federal Regulations as follows:

The FCPIAA Section 6.

14 FCPIAA Section 4(b)(2).

15 2020 OMB Guidance at 3.

16 Lake Carriers’ Ass’n v. E.P.A., 652 F.3d 1, 10 (D.C. Cir. 2011).


18 5 U.S.C. 603(a).

19 44 U.S.C. 3507(d).

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority citation for part 143 continues to read as follows:


2. Revise §143.8(b) to read as follows:

§143.8 Inflation-adjusted civil monetary penalties.

(b) 2021 Inflation adjustment. The maximum amount of each civil monetary penalty in the following charts applies to penalties assessed after January 15, 2021:

(1) For non-manipulation or attempted manipulation violations:

<table>
<thead>
<tr>
<th>U.S. Code citation</th>
<th>Civil monetary penalty description</th>
<th>Date of violation and corresponding penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).</td>
<td>For any person other than a registered entity.</td>
<td>$130,000 through 10/22/2008</td>
</tr>
<tr>
<td>7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).</td>
<td>For a registered entity or any of its directors, officers or employees.</td>
<td>625,000 through 10/22/2008</td>
</tr>
<tr>
<td>7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).</td>
<td>Any Person</td>
<td>130,000 through 10/22/2008</td>
</tr>
</tbody>
</table>

(2) For manipulation or attempted manipulation violations:

<table>
<thead>
<tr>
<th>U.S. Code citation</th>
<th>Civil monetary penalty description</th>
<th>Date of violation and corresponding penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).</td>
<td>For any person other than a registered entity.</td>
<td>$130,000 through 08/14/2011</td>
</tr>
<tr>
<td>7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).</td>
<td>For a registered entity or any of its directors, officers or employees.</td>
<td>625,000 through 08/14/2011</td>
</tr>
<tr>
<td>7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).</td>
<td>Any Person</td>
<td>130,000 through 11/01/2015</td>
</tr>
</tbody>
</table>

Issued in Washington, DC, on January 12, 2021, by the Commission.

Robert Sidman,
Deputy Secretary of the Commission,
Commodity Futures Trading Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Adjustment of Civil Monetary Penalties for Inflation—2021—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2021–00897 Filed 2–1–21; 8:45 am] E:\FR\FM\02FER1.SGM 02FER1jbell on DSKJLSW7X2PROD with RULES