Some commenters raised procedural objections to the Department’s proposed delay. The Associated Builders and Contractors, the Financial Services Institute, and Littler Mendelson, P.C.’s Workplace Policy Institute asserted that the 19-day comment period for this rulemaking was insufficient, and critiqued the Department’s statement in the NPRM that “WHD will consider only comments about its proposal to delay the rule’s effective date.” 86 FR 8327. The Department believes that the 19-day comment period did provide a meaningful opportunity to comment on the proposed delay. The Department received over 1,500 comments in response to the NPRM proposing to delay the January 2021 Rule’s effective date, comparable to the approximately 1,800 comments it received in response to the substantive notice of proposed rulemaking that it published in September 2020. See 85 FR 60600. Moreover, given the Independent Contractor Rule’s original March 8, 2021 effective date, it would have been impracticable to afford a longer comment period. Had the Department allowed for a longer comment period, the Independent Contractor Rule would have taken effect before the delay could begin, which would have defeated the purpose of this rule and caused additional confusion for regulated entities. As to the issue of the scope of comments sought in this rulemaking, the Department sought comments about, and considered whether, issues of policy, law, and fact warrant an extension of the Independent Contractor Rule’s original effective date by 60 days. If after having had additional time to consider the January 2021 Rule, the Department decides to propose any changes to the January 2021 Rule, it will at that point solicit comments on its substantive proposal.

Other commenters, including Littler Mendelson, P.C. and the National Federation of Independent Business, asserted that any delay to the Independent Contractor Rule’s March 8, 2021 effective date must be published at least 30 days before such a delay takes effect. The Department disagrees. Section 553(d) of the Administrative Procedure Act provides that substantive rules should take effect not less than 30 days after the date they are published in the Federal Register unless “otherwise provided by the agency for good cause found.” 5 U.S.C. 553(d)(3). Even if this provision were to apply, the Department finds that it would have good cause to make this rule effective immediately upon publication. Like allowing for a longer comment period, allowing for a 30-day delay between publication and the effective date of this rulemaking would result in the January 2021 Rule taking effect before the delay begins, which would undermine this rule’s fundamental purpose of delaying the effective date before the Independent Contractor Rule takes effect in accord with the Regulatory Freeze Memorandum and result in additional confusion for regulated entities. The Regulatory Freeze Memorandum was issued on January 20, 2021, only 47 days before the rule’s original effective date of March 8, 2021. It would not have been practicable to issue an NPRM proposing to delay the Independent Contractor Rule and allow for ample time for public comment on that proposal in time to publish a final rule not less than 30 days before March 8. Moreover, this rulemaking merely implements a 60-day delay of the Independent Contractor Rule, rather than itself imposing any new compliance obligations on the regulated community. Therefore, the Department finds that a lapse between publication and the effective date of this rule delaying the Independent Contractor Rule’s effective date is unnecessary. Because allowing for a 30-day period between publication and the effective date of this rulemaking is both unnecessary and impracticable, there is good cause to make this final rule delaying the Independent Contractor Rule’s effective date effective immediately upon publication.

After reviewing timely comments submitted, the Department has decided to delay the Independent Contractor Rule’s effective date from March 8, 2021, to May 7, 2021, as proposed. This delay will allow the Department additional time to review the multiple issues of law, policy, and fact that warrant additional review and consideration in accordance with the Regulatory Freeze Memorandum before the Independent Contractor Rule goes into effect.
annual adjustment. The 2015 Act provides that any increase in a CMP shall apply to CMPs that are assessed after the date the increase takes effect, regardless of whether the underlying violation predated such increase.1

This rule also amends regulations that provide civil penalties for false, fictitious, or fraudulent claims or written statements under the Department's Regulations Implementing the Program Fraud Civil Remedies Act of 1986, at 31 CFR part 16. Adjustments to CMPs under that Part were inadvertently omitted from the Department's initial catch-up adjustment and its subsequent annual adjustments. In particular, this rule adjusts for inflation the maximum amount of the civil monetary penalties that may be assessed under 31 CFR part 16, and it updates the inflation adjustments through 2021 in accordance with instructions from the Office of Management and Budget.

Treasury is currently authorized to impose CMPs against persons who make false, fictitious, or fraudulent claims or who make false, fictitious, or fraudulent written statements, pursuant to 31 U.S.C. 3802(a). The maximum CMPs under this statute were established on October 21, 1986, and they have not been adjusted. The maximum CMPs established were $5,000 for each qualifying false claim or false written statement.

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act and the Office of Management and Budget guidance required by the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be 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. As set forth in Office of Management and Budget Memorandum M–21–10 of December 23, 2020, the adjustment multiplier for 2021 is 1.01182. In order to complete the 2021 annual adjustment, each current CMP is multiplied by the 2021 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of $1. With regard to the CMPs authorized by 31 U.S.C. 3802(a), adjustments had to be made back to 2016. Pursuant to OMB Guidance, the relevant inflation factor is 2.15628 for the initial catch-up adjustment. Because application of the factor would result in an adjustment of greater than 150% for both 31 U.S.C. 3802(a) CMPs, the initial adjustment of these penalties is limited to 150%. The relevant inflation factors for 2017 through 2021 are 1.01636 (2017), 1.02041 (2018), 1.02522 (2019), 1.01764 (2020), and 1.01182 (2021).2

With respect to the $5,000 CMPs, applying the initial 150% adjustment would result in a maximum penalty amount of $7,500. Multiplying that amount by the 2017 factor of 1.01636 and rounding to the nearest dollar would yield a maximum penalty amount of $7,623. Multiplying that amount by the 2018 factor of 1.02041 and rounding yields a maximum penalty amount of $7,779. Multiplying that amount by the 2019 factor of 1.02522 and rounding yields a maximum penalty amount of $7,975. Multiplying that amount by the 2020 factor of 1.01764 and rounding yields a maximum penalty amount of $8,116. Finally, applying the 2021 factor of 1.01182 to that amount results in an adjusted maximum penalty of $8,212.

Procedural Matters

1. Administrative Procedure Act

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies to make annual adjustments for inflation to CMPs, without needing to provide notice and the opportunity for public comment and a delayed effective date required by 5 U.S.C. 553. Additionally, the methodology used for adjusting CMPs for inflation is provided by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice, an opportunity for public comment, and a delayed effective date are not required for this rule, with the exception of the initial catch-up adjustment to 31 CFR part 16.

2. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

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1 However, the increased CMP's apply only with respect to underlying violations occurring after the date of enactment of the 2015 Act, i.e., after November 2, 2015.

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

5. Direct Final Procedures

Treasury is issuing the amendments to 31 CFR part 16 as a direct final rule. The effective date of this rule is May 3, 2021 without further notice, unless Treasury receives written adverse comments before April 5, 2021. If Treasury receives timely written adverse comments on the amendments to 31 CFR part 16, Treasury will withdraw the regulation before its effective date.

List of Subjects

31 CFR Part 16
Administrative Practice and Procedure, Claims, Fraud, Penalties.
31 CFR Part 27
Administrative Practice and Procedure, Penalties.
31 CFR Part 50
Insurance, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, parts 16, 27, and 50 of title 31 of the Code of Federal Regulations are amended as follows:

PART 16—REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

1. The authority citation for part 16 continues to read as follows:


2. Effective May 3, 2021 amend §16.3 by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§16.3 Basis for civil penalties and assessments.

(a) * * * *(1) * * *

(iii) May impose a civil penalty on any person who violates the provisions of paragraph (a) of this section. The amount of a civil monetary penalty shall not exceed $8,212 for each and every use of any material in violation of paragraph (a), except that such penalty shall not exceed $41,056 for each and every use if such use is in a broadcast or telecast.

(b) * * * *(1) * * *

(ii) Includes or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the content of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $8,212 for each such statement.

§27.3 Assessment of civil penalties.

(a) Civil Penalty. An assessing official may impose a civil penalty on any person who violates any provisions of this part. The amount of a civil monetary penalty shall not exceed $8,212 for each and every use of any material in violation of this part.

(b) * * * *(1) * * *

(iii) May impose a civil penalty on any person who violates any provisions of this part. The amount of a civil monetary penalty shall not exceed $8,212 for each and every use of any material in violation of this part.

§50.83 Adjustment of civil monetary penalty amount.

(a) Inflation Adjustment. Any penalty under the Act and these regulations may not exceed the greater of $1,436,220 and, in the case of any failure to pay, charge, collect or remit amounts in accordance with the Act or these regulations such amount in dispute.

(b) * * * *(1) * * *

(iii) May impose a civil penalty on any person who violates any provisions of this part. The amount of a civil monetary penalty shall not exceed $8,212 for each and every use of any material in violation of this part.