

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 1 and 3

Agricultural Marketing Service

7 CFR Parts 205, 900, and 1170

Grain Inspection, Packers and Stockyards Administration

Farm Service Agency

7 CFR Part 735

7 CFR Part 800

Commodity Credit Corporation

7 CFR Part 1435

RIN 0510-AA03

Department of Agriculture Civil Monetary Penalties Adjustment

AGENCY: Office of the Secretary, Agricultural Marketing Service, Grain Inspection, Packers and Stockyards Administration, Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: In accordance with the **Federal Civil Penalties Inflation Adjustment Act of 1990**, as amended, this final rule adjusts civil monetary penalties imposed by agencies within USDA to incorporate an inflation adjustment.

DATES: *Effective Date:* Effective May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Maureen James, Esq., OGC, USDA, Room 2011-S, 1400 Independence Avenue, SW., Washington, DC 20250-1400, (202) 260-1615.

SUPPLEMENTARY INFORMATION:

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I. The Federal Civil Penalties Inflation Adjustment Act of 1990

The **Federal Civil Penalties Inflation Adjustment Act of 1990** (28 U.S.C. 2461 note, Pub. L. 101-410) (Act) requires Federal agencies to periodically adjust certain civil monetary penalties (CMPs) for inflation. Under the Act, a CMP is defined as any penalty, fine, or other sanction for which a Federal statute specifies a monetary amount, including a range of minimum and maximum amounts. Each Executive Agency is responsible for adjusting, pursuant to the Act, all CMPs within the agency's jurisdiction. The Act does not apply to any CMP under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, or the Social Security Act.

The Act requires each Executive Agency to make an initial inflation adjustment for all applicable CMPs not later than 180 days after the enactment of the **Debt Collection Improvement Act of 1996** (31 U.S.C. 3701 note, section 31001 of Pub. L. 104-134, 110 Stat. 1321) and subsequent inflation adjustments at least once every 4 years thereafter. USDA published its initial round of inflation adjustments in the **Federal Register** on July 31, 1997, and those adjustments became effective on September 2, 1997 (62 FR 40924). USDA published its second round of inflation adjustments in the **Federal Register** on May 24, 2005, and those adjustments became effective on June 23, 2005 (70 FR 29573). All USDA CMP adjustments are codified in subpart I of part 3 of title 7 of the **Code of the Federal Regulations** (7 CFR 3.91).

This final rule amends 7 CFR 3.91(b) to reflect the third round of USDA inflation adjustments and 7 CFR 3.91(a)(2) to reflect the new effective date of this rule. This final rule also makes conforming amendments to other agency regulations that currently specify dollar amounts for CMPs that are being adjusted by this final rule.

Method of Calculation

Under the Act, the required inflation adjustment is determined by adjusting each applicable CMP by the "cost of living adjustment" (COLA). The COLA is defined in the Act as the percentage (if any) by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June

of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. As required by the Act, USDA used the CPI for all urban consumers published by the U.S. Department of Labor. In calculating the COLA, USDA rounded to the nearest tenth.

When USDA first adjusted its CMPs pursuant to the Act in 1997, USDA explained that "[t]he rule contained in this notice reflects the initial adjustment to the listed civil monetary penalties required by the Act" (62 FR 40924; July 31, 1997). USDA continues to interpret the Act such that all listed CMPs undergo the required adjustment whenever USDA adjusts those CMPs by regulation pursuant to the Act and publishes the regulation in the **Federal Register**. In other words, the CMP is considered to have been adjusted even though the dollar amount of the penalty does not increase (a situation that arises due to application of the rounding formulas in section 5(a) of the Act). Thus, all CMPs contained in the final rule are being adjusted pursuant to the Act. USDA believes that this interpretation most accurately reflects the plain language of the statutory text.

For all CMP adjustments in this final rule, USDA used the CPI for the month of June 2008 (218.8) as the numerator CPI. However, USDA used different denominator CPI values depending on the penalty being adjusted:

1. For those CMPs that were last adjusted in 2005, USDA used the CPI for the month of June 2005 (194.5). Nearly all the CMPs being adjusted in this final rule fall into this category.

2. For those CMPs specified in statutory provisions that became effective after the effective date of the last round of USDA CMP adjustments (June 23, 2005), USDA used the CPI for the month of June of the year in which those CMPs were last set in statute. The CMPs in this category are specified in the following 6 subparagraphs of 7 CFR 3.91(b), as amended by this final rule: (1)(iv), (3)(i), (10)(i) parts of (2)(ii), (2)(v) and (2)(vii).

3. For those CMPs specified in statute provisions that were effective prior to June 23, 2005, but were erroneously excluded from the earlier rounds of USDA CMP adjustments, USDA used the CPI for the month of June of the year in which those CMPs were last set in statute. The CMPs in that category are specified in the following 9 subparagraphs of 7 CFR 3.91(b), as amended by this final rule: (1)(liv), (1)(lv), (9)(i), (10)(ii), (10)(iii), (10)(iv), (10)(v), (11)(i) and (11)(ii).

Limitations on Adjustment—Rounding

The adjustment of these CMPs is limited by six specific rounding formulas set forth in section 5(a) of the Act. Under the Act, raw inflationary increases are rounded to the nearest: (1) Multiple of \$10 in the case of penalties less than or equal to \$100; (2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; (5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and (6) multiple of \$25,000 in the case of penalties greater than \$200,000.

Due to these restrictive rounding rules, not all CMP amounts are being increased in this final rule. For example, the CMP for a violation of the licensing requirements under the Perishable Agricultural Commodities Act has a maximum of \$1,200. Making a 2009 cost of living adjustment to this penalty would result in a raw inflationary increase of \$120. However, since the penalty is greater than \$1,000 but less than \$10,000, rounding formula #3 applies. It requires that the \$120 increase be rounded to the nearest multiple of \$1,000, which is zero. Thus the penalty amount remains unchanged.

Determining which rounding formula to apply depends on the current amount of the CMP, not on the size of the raw inflationary increase. Thus, in the example above, the \$120 raw inflationary increase is subject to rounding formula #3 because the amount of that CMP is \$1,200.

Limitations on Adjustment—The “10 Percent” Cap on Initial Adjustments

Adjustment of CMPs under the Act is limited in another important respect. The Act specifies that the first adjustment of a CMP may not exceed 10 percent of such penalty. Again, USDA interprets the Act such that the required adjustment takes place each time USDA adjusts its CMPs under the Act via regulation published in the **Federal Register**. Therefore, all CMPs that are currently in 7 CFR 3.91 underwent their initial adjustment and were subject to the 10 percent cap when the first or second round of adjustments became effective, September 2, 1997 or June 23, 2005, respectively.

In this final rule, USDA applied the 10 percent cap only to those CMPs specified in statutes that became effective (1) after June 23, 2005; or (2)

before June 23, 2005, but were erroneously excluded from the second round of USDA adjustments. The CMPs in these two categories are considered to have undergone their initial adjustment in this final rule, regardless of whether the CMP dollar amounts are being increased.

II. Civil Monetary Penalties Affected by This 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) Grain Inspection, Packers and Stockyards Administration; (7) Federal Crop Insurance Corporation; (8) Rural Housing Service, (9) Farm Service Agency, (10) Commodity Credit Corporation, and (11) Office of the Secretary. The CMPs in this final rule are listed according to the applicable administering agency.

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 the Federal Civil Penalties Inflation Adjustment Act of 1990, 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 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 reviewed this regulatory action in accordance with the provisions of Executive Order 12866, Regulatory Planning and Review, and has determined that it does not meet the criteria for significant regulatory action. As indicated above, the provisions of this final rulemaking contain inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990. The great majority of individuals, organizations, and entities affected by this regulation do not engage in prohibited activities

and practices, and as a result, we believe that any aggregate economic impact of this revised regulation will be minimal, affecting only those limited few who 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 Parts 1, 3, 205, 800, 900, 1170, and 1435

Administrative practice and procedure, Debt management, Penalties.

■ For the reasons set forth in the preamble, amend 7 CFR parts 1, 3, 205, 800, 900, 1170, and 1435 to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 3125a; 31 U.S.C. 9701; and 7 CFR 2.28(b)(7)(viii).

§ 1.303 [Amended]

■ 2. Amend § 1.303(a)(1)(iv) by removing “\$5,000” and adding in its place “the amount specified at § 3.91(b)(11)(i) of this title”.

■ 3. Amend § 1.303(b)(1)(ii) by removing “\$5,000” and adding in its place “the amount specified at § 3.91(b)(11)(ii) of this title”.

PART 3—DEBT MANAGEMENT

Subpart I—Adjusted Civil Monetary Penalties

■ 4. The authority citation for subpart I continues to read as follows:

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

■ 5. In § 3.91, revise paragraphs (a)(2) and (b) to read as follows:

§ 3.91 Adjusted civil monetary penalties.

(a) * * *

(2) Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section shall apply

only to violations occurring after May 7, 2010.

* * * * *

(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 \$750 in the case of the first offense, and a minimum of \$1,100 in the case of subsequent offenses, except that the penalty shall be less than \$1,100 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 \$2,200.

(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 \$1,200 for each such offense and not more than \$350 for each day it continues, or a maximum of \$350 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 \$2,000 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 \$110 and a maximum of \$11,000.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of \$110 and a maximum of \$11,000.

(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 \$1,100.

(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 \$110.

(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 \$37.50 and a maximum of \$750.

(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 \$1,100.

(xi) Civil penalty for failure to obey a cease and desist order, or for deceptive marketing, under the Plant Variety Protection Act, codified at 7 U.S.C. 2568(b), has a minimum of \$750 and a maximum of \$11,000.

(xii) 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 \$750 and a maximum of \$7,500.

(xiii) 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 \$750.

(xiv) 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 \$750 and a maximum of \$7,500.

(xv) 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 \$750.

(xvi) 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 \$7,500.

(xvii) 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 \$1,100.

(xviii) 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 \$750 and a maximum of \$7,500.

(xix) 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 \$750.

(xx) Civil penalty for violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of \$1,100.

(xxi) 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 \$750 and a maximum of \$7,500.

(xxii) 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 \$750.

(xxiii) 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 \$1,100.

(xxiv) 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 \$750.

(xxv) 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 \$750 and a maximum of \$7,500.

(xxvi) 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 \$750.

(xxvii) 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 \$1,100 and a maximum of \$11,000.

(xxviii) 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 \$1,100.

(xxix) 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 \$750 and a maximum of \$7,500.

(xxx) 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 \$750.

(xxxi) 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 \$750 and a maximum of \$7,500.

(xxxii) 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 \$750.

(xxxiii) 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 \$1,100.

(xxxiv) 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 \$7,500.

(xxxv) 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 \$750 and a maximum of \$7,500, or in the case of a violation that is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of \$11,000 and a maximum of \$140,000.

(xxxvi) 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 \$7,500.

(xxxvii) 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(a), has a maximum of \$11,000.

(xxxviii) 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 \$750 and a maximum of \$7,500.

(xxxix) 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 \$7,500.

(xl) 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 \$1,100.

(xli) 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 \$750.

(xlii) 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 \$1,200 and a maximum of \$12,000 for each violation.

(xliii) 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 \$1,200 and a maximum of \$12,000 for each day the violation occurs.

(xliv) 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 \$1,200 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 \$7,000 for each day the violation occurs.

(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 \$700 and a maximum of \$7,000 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 \$700 for each day the violation occurs.

(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 \$1,200 for each violation.

(xlix) 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 \$7,500 for each violation.

(l) 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 \$1,100 and a maximum of \$11,000 for each violation.

(li) 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 \$11,000 for each offense.

(lii) 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 \$11,000 for each violation.

(liii) 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 \$11,000 for each violation.

(liv) 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 \$11,000 for each offense.

(lv) 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 \$1,000 for each violation.

(lvi) Civil penalty for violations of the Dairy Research Program, codified at 7 U.S.C. 4535 & 4510(b), has a maximum of \$1,100 for each 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 \$37.50 and a maximum of \$750.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$10,000, and knowing failure to obey a cease and desist order has a civil penalty of \$1,650.

(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 \$11,000.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of \$11,000.

(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: \$60,000 in the case of any individual (except that the civil penalty may not exceed \$1,100 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), \$300,000 in the case of any other person for each violation, \$500,000 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,000,000 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: \$60,000 in

the case of any individual, except that the civil penalty may not exceed \$1,100 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, \$300,000 in the case of any other person for each violation, \$500,000 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,000,000 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 \$300,000 in the case of an individual and \$600,000 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 \$2,200.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of \$4,300.

(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 recordkeeping or filing reports), (f), or (g) of the Endangered Species Act of 1973 (16 U.S.C. 1538(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d), (f), and (g)), as set forth at 16 U.S.C. 1540(a), has a maximum of \$37,500.

(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), has a maximum of \$18,200.

(xii) Civil penalty for violation, with respect to terrestrial plants, of the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as set forth at 16 U.S.C. 1540(a), has a maximum of \$750.

(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 \$110 and a maximum of \$650.

(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 \$100,000 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 \$32,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$59,000.

(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 \$32,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$59,000.

(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 \$145,200,000.

(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 \$11,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$49,000.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosives, 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 \$11,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$49,000.

(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 \$7,500 for each violation.

(ii) Civil penalty for failure to timely file certain reports, codified at 21 U.S.C. 467d, has a maximum of \$110 per day for each day the report is not filed.

(iii) Civil penalty for failure to timely file certain reports, codified at 21 U.S.C. 677, has a maximum of \$110 per day for each day the report is not filed.

(iv) Civil penalty for failure to timely file certain reports, codified at 21 U.S.C. 1051, has a maximum of \$110 per day for each day the report is not filed.

(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 \$750,000 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 \$107,500 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 \$70,000 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 \$725,000.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of \$11,000.

(6) *Grain Inspection, Packers and Stockyards Administration*—

(i) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of \$11,000.

(ii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of \$750 and not more than \$37.50 for each day the violation continues.

(iii) 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 \$750 and not more than \$37.50 for each day the violation continues.

(iv) Civil penalty for a stockyard owner, livestock market agency and dealer violation, codified at 7 U.S.C. 213(b), has a maximum of \$11,000.

(v) Civil penalty for a stockyard owner, livestock market agency and dealer compliance order, codified at 7 U.S.C. 215(a), has a maximum of \$750.

(vi) Civil penalty for failure to file required reports, codified at 15 U.S.C. 50, has a maximum of \$110.

(vii) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b-2(b), has a maximum of \$32,000.

(viii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of \$107,500.

(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, codified at 7 U.S.C. 1506(n)(1)(A), has a maximum of \$11,000.

(ii) 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 \$11,000.

(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 \$120,000 in the case of an individual, and a maximum of \$1,200,000 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 \$32,500.

(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 \$60,000 per violation.

(9) Farm Service Agency—

(i) 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 \$27,500 per violation if an agricultural product is not involved in the violation.

(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 \$10,000 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 \$10,000 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 \$10,000 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 \$5,500 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 \$5,500 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 \$5,500.

(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 \$5,500.

PART 205—NATIONAL ORGANIC PROGRAM

■ 6. The authority citation for part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

§ 205.662 [Amended]

■ 7. Amend § 205.662(g)(1) by removing “\$10,000” and adding in its place “the amount specified in § 3.91(b)(1)(xxxvii) of this title”.

PART 735—REGULATIONS FOR THE UNITED STATES WAREHOUSE ACT

■ 8. The authority for part 735 continues to read as follows:

Authority: 7 U.S.C. 241 *et seq.*

§ 735.5 [Amended]

■ 9. Amend § 735.5(a) by removing “\$25,000” and adding in its place “the amount specified in § 3.91(b)(10)(i) of this title”.

PART 800—GENERAL REGULATIONS

■ 10. The authority for part 800 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

§ 800.50 [Amended]

■ 11. Amend § 800.50(d) by removing “\$75,000” and adding in its place “the amount specified at § 3.91(b)(6)(viii) of this title”.

PART 900—GENERAL REGULATIONS

■ 12. The authority citation for part 900 continues to read as follows:

Authority: 7 U.S.C. 601–674 and 7 U.S.C. 7401.

§ 900.211 [Amended]

■ 13. Amend § 900.211 by removing “\$100” and adding in its place “the amount specified at § 3.91(b)(1) (viii) of this title”.

PART 1170—DAIRY PRODUCT MANDATORY REPORTING PROGRAM

■ 14. The authority citation for part 1170 continues to read as follows:

Authority: 7 U.S.C. 1637–1637b, as amended by Pub. L. 106–532, 114 Stat. 2541 and Pub. L. 107–171, 116 Stat. 207.

§ 1170.16 [Amended]

- 15. Amend § 1170.16(c) by removing “\$10,000” and adding in its place “the amount specified at § 3.91(b)(1)(liv) of this title”.

PART 1435—SUGAR PROGRAM

- 16. The authority citation for part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj and 7272 *et seq.*; 15 U.S.C. 714b and 714c.

§ 1435.201 [Amended]

- 17. Amend § 1435.201(a) by removing “\$10,000” and adding in its place “the amount specified at § 3.91(b)(10)(ii) of this title”.

§ 1435.318 [Amended]

- 18. Amend § 1435.318(e) by removing “\$10,000” and adding in its place “the amount specified at § 3.91(b)(10)(iii) of this title”.

- 19. Amend § 1435.318(f) by removing “\$5,000” and adding in its place “the amount specified at § 3.91(b)(10)(iv) of this title”.

Dated: January 12, 2010.

Thomas J. Vilsack,

Secretary, U.S. Department of Agriculture.

Dated: January 26, 2010.

David Shipman,

Associate Administrator, Agricultural Marketing Service.

Dated: February 19, 2010.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

Dated: February 19, 2010.

Jonathan Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–6560 Filed 4–6–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 73**

[Docket No. FAA–2010–0346; Airspace Docket No. 10–AWP–3]

RIN 2120-AA66

Amendment to Restricted Area R–2510A; El Centro, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on November 9, 1993, an error was made in the airspace description for Restricted Area R–

2510A, El Centro, CA. Specifically, the action inadvertently omitted the reference to nautical miles in the boundaries section of the description. This action corrects that error.

DATES: Effective date 0901 UTC, April 7, 2010.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:**History**

On November 9, 1993, the FAA published a final rule in the **Federal Register** (58 FR 27527), Airspace Docket No. 92–AWP–15 entitled “Alteration and Subdivision of Restricted Area R–2510A; El Centro, CA”. That action inadvertently omitted the nautical miles reference in the description. The impact of this action was not apparent until recently, when the U.S. Navy requested clarification of the airspace description. Without reference to nautical miles, the description reads in statute miles. However, the FAA’s National Aeronautical Navigation Services office currently charts the airspace in nautical miles. Since this is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, notice and public comment under 5 U.S.C. 553(b) are unnecessary.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

- In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

- 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 73.25 [Amended]

- 2. § 73.25 is amended as follows:

* * * * *

R–2510A El Centro, CA

Boundaries. Beginning at lat. 32°59'35" N., long. 115°43'33" W.; to lat. 32°55'35" N., long. 115°40'18" W.; to lat. 32°54'04" N., long. 115°40'18" W.; thence counterclockwise along a 4.3-NM mile radius circle centered at lat. 32°49'45" N., long. 115°40'18" W.; to lat. 32°50'05" N., long. 115°45'23" W.; to lat.

32°50'05" N., long. 115°55'03" W.; to lat. 32°55'50" N., long. 115°55'03" W.; to lat. 33°01'20" N., long. 116°02'18" W.; to lat. 33°06'35" N., long. 115°56'53" W.; to lat. 33°06'35" N., long. 115°51'15" W.; to the point of beginning.

Designated altitudes. Surface to 15,000 feet MSL.

Time of designation. 0700–2300 local time daily; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. Commanding Officer, U.S. Navy Fleet Area Control and Surveillance Facility, San Diego, CA.

Issued in Washington, DC, on April 1, 2010.

Ellen Crum,

Acting Manager, Airspace and Rules Group.

[FR Doc. 2010–7802 Filed 4–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[Docket Number USCG–2010–0210]

Drawbridge Operation Regulations; Upper Mississippi River, Rock Island, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operations of the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, Mile 482.9, Rock Island, Illinois. The deviation is necessary to allow the Quad Cities Heart Walkers to cross the bridge. This deviation allows the bridge to be maintained in the closed-to-navigation position for two hours from 8:30 a.m. to 10:30 a.m. on May 15, 2010.

DATES: This deviation is effective from 8:30 a.m. to 10:30 a.m. on May 15, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0210 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0210 in the “Keyword” box and then clicking “Search”. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m.