



**Billing Code 4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 11**

**[Docket No. FWS-HQ-LE-2016-0045; FF09L00200-FX-LE18110900000]**

**RIN 1018-BB32**

**Civil Penalties; Inflation Adjustments for Civil Monetary Penalties**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Interim rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is revising our civil procedure regulations. The regulations provide uniform rules and procedures for the assessment of civil penalties resulting from violations of certain laws and regulations enforced by the Service. We are issuing this interim rule, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) and Office of Management and Budget (OMB) guidance, to adjust for inflation in the statutory civil monetary penalties that may be assessed for violations of Service-administered statutes and their implementing regulations. We are required to adjust civil monetary penalties as necessary for inflation according to a formula specified in the Inflation Adjustment Act. This interim rule also revises the authority citation of part 11, updates the scope of the regulations, and corrects the address for the Departmental Cases Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior.

**DATES:** This interim rule is effective [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER]. We will accept comments on this interim rule received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking portal* at: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–HQ–LE–2016–0045.
- *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS–HQ–LE–2016–0045; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041-3803.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide to us (see **Public Comments**, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** Paul Beiriger, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement, (703) 358-1949.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The regulations at 50 CFR part 11 provide uniform rules and procedures for the assessment of civil penalties resulting from violations of certain laws and regulations enforced by the Service.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (sec. 701 of Pub. L. 114-74)

(Inflation Adjustment Act). The Inflation Adjustment Act requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch up” adjustment through rulemaking and then make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

Under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Inflation Adjustment Act, Pub. L. 114-74, 129 Stat. 584 (2015), each Federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties (civil penalties) that can be imposed under the laws administered by that agency. The Inflation Adjustment Act provides for an initial “catch up adjustment” to take effect no later than August 1, 2016, followed by subsequent adjustments to be made no later than January 15 every year thereafter. This interim rule adjusts, in accordance with the Inflation Adjustment Act, the maximum amount of each statutory penalty that may be imposed for violations of Service-administered statutes and their implementing regulations. Section 11.33 identifies the applicable Service-administered statutes and sets out the inflation-adjusted civil penalty amounts that may be imposed pursuant to each statutory provision. The adjusted penalty amounts are applicable to civil penalties assessed after the Inflation Adjustment Act takes effect.

The Inflation Adjustment Act provides for determining the initial catch up adjustment by first determining the cost-of-living adjustment (COLA), which is defined in section 5 of the Inflation Adjustment Act as the percentage (if any) for each civil monetary penalty by which the Consumer Price Index (CPI) for the month of October

2015 exceeds the CPI for the month of October of the calendar year during which the amount of such civil monetary penalty was established or adjusted under a provision of law other than this Act. The Inflation Adjustment Act further provides that the initial catch up adjustment shall not exceed 150 percent of the amount of that civil monetary penalty on the date of the enactment of the Inflation Adjustment Act. The CPI is defined in the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as the CPI for all-urban consumers published by the Department of Labor.

Once the COLA is determined, the current civil penalty is adjusted accordingly. For instance, the current maximum civil penalty amount under the Bald and Golden Eagle Protection Act (BGEPA) is \$5,000, see 16 U.S.C. 668(b), which was last adjusted in 1972. The CPI in October 1972 was 42.3 as compared to the CPI in October 2015, which was 237.838. This represents an increase of over 150 percent, but since the Inflation Adjustment Act caps the initial catch up adjustment at 150 percent, the COLA adjustment for civil penalties under BGEPA will be 150 percent. Thus, the current civil penalty of \$5,000 under BGEPA will increase to \$12,500 once this regulation becomes effective, as described below.

OMB issued a memorandum, M-16-06, entitled “Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,” which provides in Table A the civil penalty catch-up adjustment multiplier by calendar year. The Appendix to OMB’s memorandum provides step-by-step instructions for determining the catch up adjustment, and the Service determined the adjustments accordingly.

## **Public Comments**

You may submit your comments and materials concerning this interim rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**. If you submit information via <http://www.regulations.gov>, your entire submission, including any personal identifying information, will be posted on the website. If your submission is made via a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this interim rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Office of Law Enforcement (see **FOR FURTHER INFORMATION CONTACT**).

### **Clarity of the Rule**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### **Required Determinations**

#### *Executive Orders 12866 and 13563 (Regulatory Planning and Review)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this interim rule in a manner consistent with these requirements.

#### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Inflation Adjustment Act requires agencies to adjust civil penalties with an initial catch up adjustment through an interim rule. An interim rule does not include first publishing a proposed rule. Thus, the RFA does not apply to this rule.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

This interim rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), this interim rule will not “significantly or uniquely” affect small governments.

- a. This interim rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

We are the lead agency for enforcing numerous conservation acts and executive

orders, for regulating wildlife trade through the declaration process, for issuing permits to conduct activities affecting wildlife and their habitats, and for carrying out U.S. obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). No small government assistance or impact is expected as a result of this interim rule.

b. This interim rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of \$100 million or greater in any year, so it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

This interim rule will not result in any combined expenditure by State, local, or tribal governments.

*Executive Order 12630 (Takings)*

Under Executive Order 12630, this interim rule does not have significant takings implications. Under Executive Order 12630, this interim rule does not affect any constitutionally protected property rights. This interim rule has no private property takings implications as defined in Executive Order 12630. This executive order specifically exempts civil procedures for violations of law.

*Executive Order 13132 (Federalism)*

Under Executive Order 13132, this interim rule does not have significant Federalism effects. A federalism summary impact statement is not required. This interim rule will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Executive Order 12988 (Civil Justice Reform)*

Under Executive Order 12988, the Department of the Interior has determined that this interim rule does not overly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The purpose of this interim rule is to adjust for inflation the statutory civil monetary penalties that may be assessed for violations of Service-administered statutes and their implementing regulations. Specifically, this interim rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This interim rule does not contain any information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

This interim rule has been analyzed under the criteria of the National Environmental Policy Act (NEPA) and part 516, chapter 8 of the Departmental Manual (DM) (516 DM 8). This interim rule does not amount to a major Federal action significantly affecting the quality of the human environment. Neither an environmental impact statement nor an environmental assessment is required. This interim rule is categorically excluded from further NEPA requirements, under 43 CFR 46.210. This categorical exclusion addresses policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose

environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA.

*Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. For violations of certain laws and regulations enforced by the Service, individual tribal members are subject to the same civil procedures as other individuals.

*Executive Order 13211 (Energy Supply, Distribution, or Use)*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This interim rule applies only to U.S. Government civil procedures, it is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Administrative Procedure Act*

The Inflation Adjustment Act requires Federal agencies to publish interim rules

by July 1, 2016, with an effective date for the adjusted penalties no later than August 1, 2016. To comply with the Inflation Adjustment Act, we are issuing these regulations as an interim rule and are requesting comments after publication. Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for prior public comment. The Service finds that there is good cause to issue this interim rule without first providing for public comment. It would not be possible to meet the deadlines imposed by the Inflation Adjustment Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. The Service is issuing this interim rule to implement the statutory directive in the Inflation Adjustment Act, which requires agencies to publish an interim rule and to update the civil penalty amounts by applying a specified formula. The Service has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment prior to publication of this rule. Thus, pre-publication notice and public comment is impracticable and unnecessary. This rule will also update the address for the Office of Hearings and Appeals in sections 11.15, 11.25, and 11.26. Since these updates are merely ministerial, we find that pre-publication notice and public comment with respect to those revisions is unnecessary.

**List of Subjects in 50 CFR Part 11**

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Plants, Transportation, Wildlife.

## **Regulation Promulgation**

For the reasons described above, we amend part 11, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

### **PART 11—CIVIL PROCEDURES**

1. The authority citation for part 11 is revised to read as follows:

AUTHORITY: 16 U.S.C. 470aa–470mm, 470aaa–470aaa-11, 668–668d, 1361–1384, 1401–1407, 1531–1544, 3371–3378, 4201–4245, 4901–4916, 5201–5207, 5301–5306; 18 U.S.C. 42–43; 25 U.S.C. 3001–3013; and Sec. 107, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

2. Revise § 11.2 to read as follows:

#### **§ 11.2 Scope of regulations.**

The regulations contained in this part apply only to actions arising under the following laws and regulations issued thereunder:

- (a) Lacey Act, 18 U.S.C. 42–43;
- (b) Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*;
- (c) Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d;
- (d) Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*;
- (e) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.*;
- (f) African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*;
- (g) Rhinoceros and Tiger Conservation Act, 16 U.S.C. 5301 *et seq.*;
- (h) Archaeological Resources Protection Act, 16 U.S.C. 470aa *et seq.*;

- (i) Paleontological Resources Protection Act, 16 U.S.C. 470aaa *et seq.*;
- (j) The Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et seq.*;
- (k) Recreational Hunting Safety Act of 1994, 16 U.S.C. 5201 *et seq.*; and
- (l) Wild Bird Conservation Act, 16 U.S.C. 4901 *et seq.*

3. Revise § 11.15 to read as follows:

**§ 11.15 Request for a hearing.**

Except where a right to request a hearing is deemed to have been waived as provided in §11.11, the respondent may, within 45 calendar days from the date of the notice of assessment referred to in §11.14, file a dated, written request for a hearing with the Departmental Cases Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 351 South West Temple, Suite 6.300, Salt Lake City, Utah 84101.

4. Amend § 11.25 by revising paragraph (a) to read as follows:

**§11.25 Appeal.**

(a) Either the respondent or the Director may seek an appeal from the decision of an administrative law judge rendered subsequent to January 1, 1974, by the filing of a “Notice of Request for Appeal” with the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 351 South West Temple, Suite 6.300, Salt Lake City, Utah 84101, within 30 calendar days of the date of the administrative law judge's decision. Such notice shall be accompanied by proof of service on the administrative law judge and

the opposing party.

\* \* \* \* \*

5. Revise § 11.26 to read as follows:

**§11.26 Reporting service.**

Copies of decisions in civil penalty proceedings instituted under statutes referred to in subpart A of this part and rendered subsequent to June 3, 1970, may be obtained by letter of request addressed to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 351 South West Temple, Suite 6.300, Salt Lake City, Utah 84101. Fees for this service shall be as established by the Director of that Office.

6. Add a new subpart D to part 11 to read as follows:

**Subpart D— CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS**

Sec.

11.31 Definitions.

11.32 Purpose and scope.

11.33 Adjustments to penalties.

11.34 Subsequent adjustments.

**Subpart D— CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS**

**§11.31 Definitions.**

(a) *Civil monetary penalty* means any penalty, fine, or other sanction that:

(1)(i) Is for a specific monetary amount as provided by Federal law; or

(ii) Has a maximum amount provided for by Federal law;

(2) Is assessed or enforced by an agency pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

(b) *Inflation Adjustment Act* means the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74, November 2, 2015, 129 Stat. 584, 28 U.S.C. 2461 note).

**§11.32 Purpose and scope.**

The purpose of this part is to make the inflation adjustment, described in and required by the Inflation Adjustment Act, of each civil monetary penalty provided by law within the jurisdiction of the U.S. Fish and Wildlife Service.

**§11.33 Adjustments to penalties.**

The civil monetary penalties provided by law within the jurisdiction of the U.S. Fish and Wildlife Service are adjusted as follows:

<b>Law</b>	<b>Citation</b>	<b>Type of Violation</b>	<b>Maximum Civil Monetary Penalty</b>
(a) African Elephant Conservation Act	16 U.S.C. 4224(b)	Any violation	\$9,893
(b) Bald and Golden Eagle Protection Act	16 U.S.C. 668(b)	Any violation	\$12,500
(c) Endangered Species Act of 1973	16 U.S.C. 1540(a)(1)	(1) Knowing violation of section 1538	\$49,467
		(2) Other knowing violation	\$23,744
		(3) Any other violation	\$1,250
(d) Lacey Act Amendments of 1981	16 U.S.C. 3373(a)	(1) Violations referred to in 16 U.S.C. 3373(a)(1)	\$25,000
		(2) Violations referred to in 16 U.S.C. 3373(a)(2)	\$625
(e) Marine Mammal Protection Act of 1972	16 U.S.C. 1375	Any violation	\$25,000
(f) Recreational Hunting Safety Act of 1994	16 U.S.C. 5202(b)	(1) Violation involving use of force or violence or threatened use of force or violence	\$15,909
		(2) Any other violation	\$7,954
(g) Rhinoceros and Tiger Conservation Act of 1998	16 U.S.C. 5305a(b)(2)	Any violation	\$17,403

(h) Wild Bird Conservation Act	16 U.S.C. 4912(a)(1)	(1) Violation of section 4910(a)(1), section 4910(a)(2), or any permit issued under section 4911	\$41,932
		(2) Violation of section 4910(a)(3)	\$20,127
		(3) Any other violation	\$839

**§11.34 Subsequent adjustments.**

The Secretary of the Interior or his or her designee will, every year after August 1, 2016, make the inflation adjustment described in and required by the Inflation Adjustment Act of each civil monetary penalty provided by law and within the jurisdiction of the U.S. Fish and Wildlife Service. Each annual adjustment will be reflected in the table in §11.33.

Dated: June 21, 2016. \_\_\_\_\_

Signed: Michael J. Bean, \_\_\_\_\_

Assistant Secretary for Fish and Wildlife and Parks.

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