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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 269

[Docket ID: DOD-2016-OS-0045]

RIN 0790-AJ42

Civil Monetary Penalty Inflation Adjustment

AGENCY: Under Secretary of Defense (Comptroller), Department of Defense.

ACTION: Final rule.

SUMMARY: On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990. The 2015 Act updates the process by which agencies adjust applicable civil monetary penalties (CMP) for inflation to retain the deterrent effect of those penalties. The 2015 Act requires that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must, by regulation published in the Federal Register, adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. Accordingly, the Department of Defense must adjust the level of all civil monetary penalties under its jurisdiction through a final rule and make subsequent annual adjustments for inflation.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Brian Banal, 703-571-1652.

**SUPPLEMENTARY INFORMATION:**

On Thursday, May 26, 2016 (81 FR 33389-33391), the Department of Defense published an interim final rule titled “Civil Monetary Penalty Inflation Adjustment” for a 60-day public comment period. The public comment period ended on July 25, 2016. No public comments were received.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust the level of civil monetary penalties through a final rule in the Federal Register.

**Background Information**

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461, note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, April 26, 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), Public Law 114-74, November 2, 2015, requires agencies to annually adjust the level of Civil Monetary Penalties (CMP) for inflation to improve their effectiveness and maintain their deterrent effect. The 2015 Act requires that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. The inflation adjustment must be determined by increasing

the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment, rounded to the nearest multiple of \$1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment (January 15), exceeds the CPI for the month of October in the previous calendar year. The initial adjustment to a CMP may not exceed 150 percent of the corresponding level in effect on November 2, 2015.

Any increased penalties will only apply to violations which occur after the date on which the increase takes effect.

Each CMP subject to the jurisdiction of the Department of Defense has been adjusted in accordance with the 2015 Act. In compliance with the 2015 Act, the Department of Defense is amending its CMP penalty amounts.

### **Executive Summary**

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act). The 2015 Act updates the process by which agencies adjust applicable civil monetary penalties for inflation to retain the deterrent effect of those penalties. Agencies are required to make an initial “catch-up” adjustment for civil monetary penalties with the new levels published in the Federal Register by July 1, 2016, to take effect no later than August 1, 2016. Thereafter, agencies are required to make annual inflationary adjustments, starting January 15, 2017, and each year following, based on Office of Management and Budget (OMB) guidance. Finally, each year in accordance with

OMB Circular A-136, agencies will report in the Agency Financial Reports the status of adjustments to civil monetary penalties.

## **I. Purpose of the Regulatory Action**

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, requires the Department of Defense to adjust applicable civil monetary penalties for inflation to improve the effectiveness and retain the deterrent effect of such penalties. The implementation of this rule will deter violations of law, encourage corrective action(s) of existing violations, and prevent waste, fraud, and abuse within the Department of Defense.

### Description of Authority Citation

Section 4(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, (28 U.S.C. 2461, note), mandates that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency (in this case the Secretary of Defense) must adjust for inflation each civil monetary penalty provided by law within the jurisdiction of the Federal agency (in this case the Department of Defense), except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 [26 U.S.C. 1 *et seq.*] or the Tariff Act of 1930 [19 U.S.C. 1202 *et seq.*], through a final rulemaking; and publish each such adjustment in the Federal Register.

## **II. Summary of the Major Provisions of the Regulatory Action in Question**

Previously, the Debt Collection Improvement Act of 1996 required agencies to adjust civil monetary penalty levels every four years. The Federal Civil Penalties Inflation Adjustment Act

Improvements Act of 2015 (the 2015 Act) Act updates this requirement, requiring annual adjustments for inflation based on Office of Management and Budget (OMB) guidance.

In accordance with the 2015 Act, OMB will provide adjustment rate guidance no later than December 15, 2016, and no later than December 15 for each following year, to adjust for inflation in the Consumer Price Index for all Urban Consumers as of the most recent October. Agencies are required to publish annual inflation adjustments in the Federal Register no later than January 15, starting in 2017, and each subsequent year.

Agency heads are responsible for implementing this guidance and for submitting information to OMB annually on applicable civil monetary penalties through Agency Financial Reports in accordance with OMB Circular A-136.

### **III. Costs and Benefits**

There are no significant costs associated with the regulatory revisions that would impose any mandates on the Department of Defense, Federal, State or local governments, or the private sector. The Department of Defense anticipates that civil monetary penalty collections may increase in the future due to new penalty authorities and other changes in this rule. However, it is difficult to accurately predict the extent of any increase, if any, due to a variety of factors, such as budget and staff resources, the number and quality of civil penalty referrals or leads, and the length of time needed to investigate and resolve a case.

### **Regulatory Procedures**

**Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” because it does not: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive Orders.

### **Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule the mandates of which require spending in any year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

### **Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. Chapter 6)**

The Department of Defense certifies that this rule is not subject to the Regulatory Flexibility Act because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require a regulatory flexibility analysis.

**Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

The Department of Defense certifies that this rule does not trigger any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

**Executive Order 13132, “Federalism”**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 269

Administrative practice and procedure, Penalties.

Accordingly, the interim final rule published at 81 FR 33389-33391 on May 26, 2016 is adopted as a final rule without change.

Dated: September 7, 2016.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

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