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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 161220999—6999—01]

RIN 0605—AA47

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to adjust for inflation each civil monetary penalty (CMP) provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt

Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 which provided for initial catch up adjustments for inflation in 2016, and under a revised methodology for each year thereafter. The initial catch up adjustments for inflation to CMPs to the Department of Commerce's CMPs were published in the **Federal Register** on June 7, 2016 and became effective July 7, 2016, and, as required, did not exceed 150 percent of the amount of the CMP on the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (November 2, 2015). The revised methodology for agencies for 2017 and each year thereafter provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. Effective 2017, agencies' annual adjustments for inflation to CMPs shall take effect not later than January 15. The Department of Commerce's 2017 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. The Department of Commerce's 2017 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

DATES: This rule is effective January 15, 2017.

FOR FURTHER INFORMATION, CONTACT: Stephen Kunze, Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482-1207, Department of Commerce, 1401 Constitution Avenue NW, Room D200, Washington, DC 20230. The Department of Commerce's Civil Monetary Penalty Adjustments for Inflation are available for downloading from the

Department of Commerce, Office of Financial Management's web site at the following address:
http://www.osec.doc.gov/ofm/OFM_Publications.html.

SUPPLEMENTARY INFORMATION:

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), provided for agencies' adjustments for inflation to CMPs to ensure that CMPs continue to maintain their deterrent value and that CMPs due to the Federal Government were properly accounted for and collected. On October 24, 1996, November 1, 2000, December 14, 2004, December 11, 2008, and December 7, 2012, the Department of Commerce published in the **Federal Register** a schedule of CMPs adjusted for inflation as required by law.

A CMP is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,
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.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74) further amended the Federal Civil Penalties Inflation Adjustment

Act of 1990 to improve the effectiveness of CMPs and to maintain their deterrent effect. This amendment requires agencies to: (1) Adjust the CMP levels in effect as of November 2, 2015, with initial catch up adjustments for inflation through a final rulemaking that shall take effect no later than August 1, 2016; and (2) make subsequent annual adjustments for inflation to CMPs that shall take effect not later than January 15.

The Department of Commerce's initial catch up adjustments for inflation to CMPs were published in the **Federal Register** on June 7, 2016, and the new CMP levels became effective July 7, 2016.

The Department of Commerce's 2017 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These 2017 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

This regulation adjusts for inflation CMPs that are provided by law within the jurisdiction of the Department of Commerce. The actual CMP assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of NOAA internal guidelines that are used when assessing CMPs for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the CMPs. The CMP ranges in the Penalty Policy are intended to aid enforcement attorneys in determining the appropriate CMP to assess for a particular violation. The Penalty Policy is

maintained and made available to the public on NOAA's Office of the General Counsel, Enforcement Section web site at: <http://www.gc.noaa.gov/enforce-office3.html>.

The Department of Commerce's 2017 adjustments for inflation to CMPs set forth in this regulation were determined pursuant to the revised methodology prescribed by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by the cost-of-living adjustment. The term "cost-of-living adjustment" is defined by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For the 2017 adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage for each CMP by which the Consumer Price Index for the month of October 2016 exceeds the Consumer Price Index for the month of October 2015.

Classification

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is given by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Commerce is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity for public comment are not required for this rule.

Paperwork Reduction Act

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.

Regulatory Analysis

E.O. 12866, Regulatory Review

This rule is not a significant regulatory action as that term is defined in Executive Order 12866.

Regulatory Flexibility Act

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility act (5 U.S.C. 601, et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects in 15 CFR Part 6

Law enforcement, Civil monetary penalties.

Dated: December 21, 2016.

Stephen Kunze,

Deputy Chief Financial Officer and Director for Financial Management, Department of Commerce.

Authority and Issuance

For the reasons stated in the preamble, the Department of Commerce revises 15 CFR part 6 to read as follows:

PART 6—CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION

Sec.

6.1 Definitions.

6.2 Purpose and scope.

6.3 2017 Adjustments for inflation to civil monetary penalties.

6.4 Effective date of 2017 adjustments for inflation to civil monetary penalties.

6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

Authority: Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104-134, 110 Stat. 1321 (31 U.S.C. 3701 note); Sec. 701 of Pub. L. 114-74, 129 Stat. 599 (28 U.S.C. 1 note; 28 U.S.C. 2461 note).

§ 6.1 Definitions.

(a) The *Department of Commerce* means the United States Department of Commerce.

(b) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and

(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.

§ 6.2 Purpose and scope.

The purpose of this part is to make adjustments for inflation to civil monetary penalties, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74), of each civil monetary penalty provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce).

§ 6.3 Adjustments for inflation to civil monetary penalties.

The civil monetary penalties provided by law within the jurisdiction of the Department of Commerce, as set forth in paragraphs (a) through (f) of this section, are hereby adjusted for inflation in 2017 in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, from the

amounts of such civil monetary penalties that were in effect as of July 7, 2016, to the amounts of such civil monetary penalties, as thus adjusted. The year stated in parenthesis represents the year that the civil monetary penalty was last set by law or adjusted by law (excluding adjustments for inflation).

(a) *United States Department of Commerce.* (1) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from \$10,781 to \$10,957.

(2) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from \$10,781 to \$10,957.

(3) 31 U.S.C. 3729(a)(1)(G), False Claims Act (1986); violation, minimum from \$10,781 to \$10,957; maximum from \$21,563 to \$21,916.

(b) *Bureau of Industry and Security.* (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act (1990), violation, maximum from \$44,539 to \$45,268.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act (1998), violation, maximum from \$36,256 to \$36,849.

(3) 22 U.S.C. 6761(a)(1)(B), Chemical Weapons Convention Implementation Act (1998), violation, maximum from \$7,251 to \$7,370.

(4) 50 U.S.C. 1705(b), International Emergency Economic Powers Act (2007), violation, maximum from \$284,582 to \$289,238.

(5) 22 U.S.C. 8142(a), United States Additional Protocol Implementation Act (2006), violation, maximum from \$29,464 to \$29,946.

(c) *Census Bureau.* (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics (2002), each day's delinquency of a violation; total of not to exceed maximum violation, from \$1,312 to \$1,333; maximum per violation, from \$13,118 to \$13,333.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics (2002), violation, maximum from \$13,118 to \$13,333.

(d) *Economics and Statistics Administration*. (1) 22 U.S.C. 3105(a), International Investment and Trade in Services Act (1990); failure to furnish information, minimum from \$4,454 to \$4,527; maximum from \$44,539 to \$45,268.

(e) *International Trade Administration*. (1) 19 U.S.C. 81s, Foreign Trade Zone (1934), violation, maximum from \$2,750 to \$2,795.

(2) 19 U.S.C. 1677f(f)(4), U.S.-Canada FTA Protective Order (1988), violation, maximum from \$197,869 to \$201,106.

(f) *National Oceanic and Atmospheric Administration*. (1) 51 U.S.C. 60123(a), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from \$10,874 to \$11,052.

(2) 51 U.S.C. 60148(c), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from \$10,874 to \$11,052.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), violation, maximum from \$227,666 to \$231,391.

(4) 16 U.S.C. 783, Sponge Act (1914), violation, maximum from \$1,625 to \$1,652.

(5) 16 U.S.C. 957(d), (e), and (f), Tuna Conventions Act of 1950 (1962):

(i) Violation of 16 U.S.C. 957(a), maximum from \$81,250 to \$82,579.

(ii) Subsequent violation of 16 U.S.C. 957(a), maximum from \$175,000 to \$177,863.

(iii) Violation of 16 U.S.C. 957(b), maximum from \$2,750 to \$2,795.

(iv) Subsequent violation of 16 U.S.C. 957(b), maximum from \$16,250 to \$16,516.

(v) Violation of 16 U.S.C. 957(c), maximum from \$350,000 to \$355,726.

(6) 16 U.S.C. 957(i), Tuna Conventions Act of 1950,¹ violation, maximum from \$178,156 to \$181,071.

- (7) 16 U.S.C. 959, Tuna Conventions Act of 1950,² violation, maximum from \$178,156 to \$181,071.
- (8) 16 U.S.C. 971f(a), Atlantic Tunas Convention Act of 1975,³ violation, maximum from \$178,156 to \$181,071.
- (9) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988 (1988), violation, maximum from \$494,672 to \$502,765.
- (10) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983 (1983), violation, maximum from \$23,548 to \$23,933.
- (11) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1972), violation, maximum from \$27,500 to \$27,950.
- (12) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act,⁴ violation, maximum from \$178,156 to \$181,071.
- (13) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), violation, maximum from \$167,728 to \$170,472.
- (14) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973:
- (i) Violation as specified (1988), maximum from \$49,467 to \$50,276.
 - (ii) Violation as specified (1988), maximum from \$23,744 to \$24,132.
 - (iii) Otherwise violation (1978), maximum from \$1,625 to \$1,652.
- (15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from \$178,156 to \$181,071.
- (16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984,⁵ violation, maximum from \$178,156 to \$181,071.
- (17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990,⁶ violation, maximum from \$178,156 to \$181,071.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from \$25,464 to \$25,881.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from \$637 to \$647.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982,⁷ violation, maximum from \$178,156 to \$181,071.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985,⁸ violation, maximum from \$178,156 to \$181,071.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from \$1,078 to \$1,096; maximum from \$10,781 to \$10,957.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992,⁹ violation, maximum from \$178,156 to \$181,071.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act,¹⁰ violation, maximum from \$178,156 to \$181,071.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act,¹¹ violation, maximum from \$178,156 to \$181,071.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from \$154,742 to \$157,274.

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995,¹² violation, maximum from \$178,156 to \$181,071.

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act,¹³ violation, maximum from \$178,156 to \$181,071.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006,¹⁴ violation, maximum from \$178,156 to \$181,071.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from \$27,500 to \$27,950.

(ii) Subsequent violation, maximum from \$81,250 to \$82,579.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from \$70,117 to \$71,264.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from \$70,117 to \$71,264.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012,¹⁵ violation, maximum from \$178,156 to \$181,071.

(33) 16 U.S.C. 7407(b)(1), Port State Measures Agreement Act of 2015,¹⁶ violation, maximum from \$178,156 to \$181,071.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act,¹⁷ violation, maximum from \$178,156 to \$181,071.

¹This National Oceanic and Atmospheric Administration maximum civil monetary penalty, as prescribed by law, is the maximum civil penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (item (15)).

² See footnote 1.

³ See footnote 1.

⁴ See footnote 1.

⁵ See footnote 1.

⁶ See footnote 1.

⁷ See footnote 1.

⁸ See footnote 1.

⁹ See footnote 1.

¹⁰ See footnote 1.

¹¹ See footnote 1.

¹² See footnote 1.

¹³ See footnote 1.

¹⁴ See footnote 1.

¹⁵ See footnote 1.

¹⁶ See footnote 1.

¹⁷ See footnote 1.

§ 6.4 Effective date of adjustments for inflation to civil monetary penalties.

The Department of Commerce's 2017 adjustments for inflation made by § 6.3, of the civil monetary penalties there specified, are effective on January 15, 2017, and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.3, apply only to those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to January 15, 2017 as provided in § 6.5.

§ 6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to the Department of Commerce's civil monetary penalties annually, which shall take effect not later than January 15, notwithstanding section 553 of title 5, United States Code.

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