



**Billing Code 3510-12-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[Docket No. 190325274-9274-01]**

**RIN 0648-XG926**

**Revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions**

**AGENCY:** Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) announces the availability of draft revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy) for public review and comment. The revisions to the policy reflect new legislation enacted and regulations promulgated, the most recent adjustments to the maximum civil monetary penalties authorized under statutes administered and enforced by NOAA, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, and clarifications to improve enforcement consistency nationally, increase predictability in enforcement, improve transparency in enforcement, and more effectively protect natural resources.

**DATES:** The draft revisions to the Penalty Policy will remain available for public review until *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

To ensure that comments will be considered, NOAA must receive written comments by *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

**ADDRESSES:** Interested persons may submit comments by any of the following methods:

- *Electronic Submissions:* Submit electronic public comments, identified by NOAA-HQ-2019-0029, at <http://www.regulations.gov>. The docket established for this rulemaking can be found at: <http://www.regulations.gov/#!docketDetail;D=NOAA-HQ-2019-0029>. Click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Enforcement Section, Office of the General Counsel, National Oceanic and Atmospheric Administration, 1315 East West Highway, SSMC-3 15424, Silver Spring, MD 20910, Attn: Meggan Engelke-Ros.

The draft revisions to the Penalty Policy are available electronically at the following Web site: <https://www.gc.noaa.gov/enforce-office3.html>. Commenters may also request a hard copy of the draft revisions to the Penalty Policy by sending a self-addressed envelope (size 8.5 x 11 inches) to the street address provided above. Comments submitted in response to this notice are a matter of public record. Before including an address, phone number, email address, or other personal identifying information in a comment, please be aware that comments – including any personal identifying information – can and will be made publicly available. While a request can be made to withhold personal identifying information from public review, NOAA cannot ensure that it will be able to do so.

Comments submitted electronically will generally be posted to <http://www.regulations.gov> without change. For posted comments, all personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Meggan Engelke-Ros at 301-427-2202.

**SUPPLEMENTARY INFORMATION:** On April 14, 2011, NOAA published its new NOAA Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (76 FR 20959). On July 1, 2014, NOAA issued a revised Penalty Policy. As explained more fully in the text of the revised Penalty Policy, the purpose of this Policy is to continue to ensure that: (1) civil administrative penalties and permit sanctions are assessed in accordance with the laws that NOAA enforces in a fair and consistent manner; (2) penalties and permit sanctions are appropriate for the gravity of the violation; (3) penalties and permit sanctions are sufficient to deter both individual violators and the regulated community as a whole from committing violations; (4) economic incentives for noncompliance are eliminated; and (5) compliance is expeditiously achieved and maintained to protect natural resources.

This revised Penalty Policy also reflects legislation passed and regulations promulgated since issuance of the 2014 Policy, in particular:

- The Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015, Pub. L. 114-81, which implemented the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing and amended the enforcement provisions of a number of statutes administered by NOAA; and
- The most recent adjustments to the maximum civil monetary penalties authorized under statutes administered and enforced by NOAA, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (see 84 FR 2445, February 7, 2019).

Under this revised Policy, NOAA will continue to promote consistency at a national level, provide greater predictability for the regulated community and the public, maintain transparency in enforcement, and more effectively protect natural resources. The major changes to the existing Penalty Policy made by this revision include:

(1) Additional clarity on what would be considered “such other matters as justice may require” under the adjustment factors;

(2) Clarification on our policy for when and how the newly adjusted statutory penalty maximums will apply;

(3) Clarification of the policy on application of prior offenses to penalty assessments;

(4) Updates to the penalty schedules to reflect new statutory authorities or regulations;

(5) Adjustments to the penalty matrixes to reflect the most recent adjustments to the maximum civil monetary penalties.

Some of the statutory adjustments to the maximum civil monetary penalties were significant and required a rebalancing of our distribution of the penalty ranges in the penalty matrixes. In making these adjustments, there were two primary considerations that affected the revised penalty matrixes. First, for each matrix that was adjusted, a percentage increase was applied across the entire matrix and the percentage increase was, in all cases, less than the percentage increase to the statutory maximum (numbers were rounded). This was done so as to take a conservative approach to the statutory penalty increases, which reflected a “catch-up” application of adjustments for inflation causing some significant penalty increases. Second, the matrixes were adjusted to ensure each individual matrix utilized the full penalty range in a balanced manner so that the penalty ranges increased gradually as the gravity level of the violations increased, rather than having an exponential increase in penalty ranges from one gravity level to the next.

The revised Penalty Policy will supersede the previous Penalty Policy regarding the assessment of penalties or permit sanctions, and previous penalty and permit sanction schedules issued by the NOAA Office of General Counsel. This Penalty Policy provides guidance for the

NOAA General Counsel's Office in assessing penalties but is not intended to create a right or benefit, substantive or procedural, enforceable at law or in equity, in any person or company. NOAA retains discretion to assess the full range of penalties authorized by statute in any particular case.

The full revised Penalty Policy, along with examples, matrixes, and schedules can be found at <https://www.gc.noaa.gov/enforce-office3.html>. More information about the NOAA General Counsel Enforcement Section can be found at <https://www.gc.noaa.gov/enforce-office.html>.

Dated: April 25, 2019.

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Jeff Dillen,

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National Oceanic and Atmospheric Administration.

[FR Doc. 2019-08895 Filed: 5/1/2019 8:45 am; Publication Date: 5/2/2019]