

NFA to perform the full range of registration processing functions with respect to applicants for and persons registered as a: futures commission merchant, commodity pool operator, or commodity trading advisor;<sup>7</sup> introducing broker;<sup>8</sup> leverage transaction merchant;<sup>9</sup> floor broker;<sup>10</sup> floor trader;<sup>11</sup> retail foreign exchange dealer;<sup>12</sup> and swap dealer or major swap participant (collectively, registrants).<sup>13</sup> Additionally, the NFA has adopted, and the Commission has approved, rules that govern the performance of the registration functions. For example, NFA Rule 501 pertains to the NFA's authority to deny, condition, suspend, and revoke registration for registrants. NFA Rule 504 sets forth the procedures governing applicants and registrants disqualified from registration under sections 8a(2), 8a(3), or 8a(4) of the Act.

In light of NFA's experience in processing and maintaining exchange disciplinary and access denial actions on behalf of the Commission, the Commission has determined that it will continue to delegate these functions to the NFA. This Notice and Order is in accord with the Commission's previous delegations to the NFA to perform registration processing functions with respect to applicants and registrants, in that, an individual's or firm's disciplinary history clearly is a factor that must be considered in any fitness determination. Deeming the NFA as the custodian of all exchange § 9.11 filings, and delegating to the NFA the responsibility for processing such filings and generating reports with the information amassed, should ensure that the NFA has the necessary information to continue to make appropriate registration determinations. Further, the Commission believes that this delegation order will enhance efficiency by permitting the Commission to carry out its statutory responsibilities under the CEA, while also freeing up Commission resources to be directed to other parts of its regulatory mandate.

#### IV. Conclusion and Order

The Commission has determined, in accordance with section 8a(10) of the Act, to delegate to the NFA the authority to perform the following functions:

(1) To process exchange disciplinary information filed with it by an exchange

or the Commission for inclusion in the BASIC system;

(2) To provide the Commission with access to a Management Report summarizing all recent exchange disciplinary information and to provide the Commission with the capability to generate standardized reports on the BASIC system;

(3) To assist the Commission in enforcing exchange compliance with regulation 9.11 filing requirements; and

(4) To serve as the official custodian of a database containing records of all exchange disciplinary and access denial actions filed with the NFA for inclusion in the BASIC system.

The NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Notice and Order shall affect the Commission's oversight authority of exchange disciplinary programs. The Commission is retaining all of its oversight authority, including its authority to review and to modify exchange disciplinary actions and to take enforcement or other remedial action against exchanges for noncompliance with § 9.11. The NFA may submit to the Commission for clarification any specific matters that have been delegated to it, and

Commission staff will be available to discuss with NFA staff issues relating to implementation of this Notice and Order.

Issued in Washington, DC, on January 9, 2018, by the Commission.

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

#### Appendix to Performance of Certain Functions by the National Futures Association With Respect to Regulation 9.11—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz and Behnam voted in the affirmative. No Commissioner voted in the negative.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 250 and 385

[Docket No. RM18-4-000; Order No. 839]

#### Civil Monetary Penalty Inflation Adjustments

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing a final rule to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the Commission's jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the Commission to issue this final rule.

**DATES:** This final rule is effective January 12, 2018.

**FOR FURTHER INFORMATION CONTACT:** Todd Hettenbach, Attorney, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8794 [Todd.Hettenbach@ferc.gov](mailto:Todd.Hettenbach@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Order No. 839

##### Final Rule

1. In this final rule, the Federal Energy Regulatory Commission (Commission) is complying with its statutory obligation to amend the civil monetary penalties provided by law for matters within the agency's jurisdiction.

##### Background

2. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act),<sup>1</sup> which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act),<sup>2</sup> required the head of each federal agency to issue a rule by July 2016 adjusting for inflation each "civil monetary penalty" provided by law within the agency's jurisdiction and to make further inflation adjustments on an annual basis every January 15 thereafter.<sup>3</sup>

##### II. Discussion

3. The 2015 Adjustment Act defines a civil monetary penalty as any penalty, fine, or other sanction that: (A)(i) Is for a specific monetary amount as provided by federal law; or (ii) has a maximum amount provided for by federal law; (B) is assessed or enforced by an agency pursuant to federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the federal courts.<sup>4</sup> This

<sup>1</sup> Sec. 701, Public Law 114-74, 129 Stat. 584, 599.

<sup>2</sup> Public Law 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note).

<sup>3</sup> 28 U.S.C. 2461 note, at (4). The Commission made its January 2017 adjustment on January 9, 2017, in Docket No. RM17-9-000. See *Civil Monetary Penalty Inflation Adjustments*, Order No. 834, 82 FR 8137 (Jan. 24, 2017), FERC Stats. & Regs. ¶ 31,390 (2017).

<sup>4</sup> *Id.* (3).

<sup>7</sup> See 49 FR 39593 (Oct. 9, 1984).

<sup>8</sup> See 48 FR 35158 (Aug. 3, 1983).

<sup>9</sup> See 54 FR 19556 (May 8, 1989).

<sup>10</sup> See 51 FR 34490 (Sep. 29, 1986).

<sup>11</sup> See 58 FR 19657 (Apr. 15, 1993).

<sup>12</sup> See 75 FR 55310 (Sep. 10, 2010).

<sup>13</sup> See 77 FR 2708 (Jan. 19, 2012).

definition applies to the maximum civil penalties that may be imposed under the Federal Power Act (FPA),<sup>5</sup> the Natural Gas Act (NGA),<sup>6</sup> the Natural Gas Policy Act of 1978 (NGPA),<sup>7</sup> and the Interstate Commerce Act (ICA).<sup>8</sup>

4. Under the 2015 Adjustment Act, the first step for such adjustment of a civil monetary penalty for inflation requires determining the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI-U) for October of the preceding year exceeds the CPI-U for

October of the year before that.<sup>9</sup> The CPI-U for October 2017 exceeded the CPI-U for October 2016 by 2.041 percent.<sup>10</sup>

5. The second step requires multiplying the CPI-U percentage increase by the applicable existing maximum civil monetary penalty.<sup>11</sup> This step results in a base penalty increase amount.

6. The third step requires rounding the base penalty increase amount to the nearest dollar and adding that amount to the base penalty to calculate the new

adjusted maximum civil monetary penalty.<sup>12</sup>

7. Under the 2015 Adjustment Act, an agency is directed to use the maximum civil monetary penalty applicable at the time of assessment of a civil penalty, regardless of the date on which the violation occurred.<sup>13</sup>

8. The adjustments that the Commission is required to make pursuant to the 2015 Adjustment Act are reflected in the following table:

Source	Existing maximum civil monetary penalty	New adjusted maximum civil monetary penalty
16 U.S.C. 825o-1(b), Sec. 316A of the Federal Power Act.	\$1,213,503 per violation, per day .....	\$1,238,271 per violation, per day.
16 U.S.C. 823b(c), ..... Sec. 31(c) of the Federal Power Act .....	\$21,916 per violation, per day .....	\$22,363 per violation, per day.
16 U.S.C. 825n(a), ..... Sec. 315(a) of the Federal Power Act .....	\$2,795 per violation .....	\$2,852 per violation.
15 U.S.C. 717t-1, ..... Sec. 22 of the Natural Gas Act .....	\$1,213,503 per violation, per day .....	\$1,238,271 per violation, per day.
15 U.S.C. 3414(b)(6)(A)(i), Sec. 504(b)(6)(A)(i) of the Natural Gas Policy Act of 1978.	\$1,213,503 per violation, per day .....	\$1,238,271 per violation, per day.
49 App. U.S.C. 6(10) (1988), Sec. 6(10) of the Interstate Commerce Act.	\$1,270 per offense and \$64 per day after the first day.	\$1,296 per offense and \$65 per day after the first day.
49 App. U.S.C. 16(8) (1988), Sec. 16(8) of the Interstate Commerce Act.	\$12,705 per violation, per day .....	\$12,964 per violation, per day.
49 App. U.S.C. 19a(k) (1988), Sec. 19a(k) of the Interstate Commerce Act.	\$1,270 per offense, per day .....	\$1,296 per offense, per day.
49 App. U.S.C. 20(7)(a) (1988), Sec. 20(7)(a) of the Interstate Commerce Act.	\$1,270 per offense, per day .....	\$1,296 per offense, per day.

**III. Administrative Findings**

9. Congress directed that agencies issue final rules to adjust their maximum civil monetary penalties notwithstanding the requirements of the Administrative Procedure Act (APA),<sup>14</sup> Because the Commission is required by law to undertake these inflation adjustments notwithstanding the notice and comment requirements that otherwise would apply pursuant to the APA, and because the Commission lacks discretion with respect to the method and amount of the adjustments, prior notice and comment would be impractical, unnecessary, and contrary to the public interest.

**IV. Regulatory Flexibility Statement**

10. The Regulatory Flexibility Act, as amended, requires agencies to certify that rules promulgated under their authority will not have a significant economic impact on a substantial number of small businesses.<sup>15</sup> The

requirements of the Regulatory Flexibility Act apply only to rules promulgated following notice and comment.<sup>16</sup> The requirements of the Regulatory Flexibility Act do not apply to this rulemaking because the Commission is issuing this final rule without notice and comment.

**V. Paperwork Reduction Act**

11. This rule does not require the collection of information. The Commission is therefore not required to submit this rule for review to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.<sup>17</sup>

**VI. Document Availability**

12. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's

Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington DC 20426.

13. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

14. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202)-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659, [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

<sup>5</sup> 16 U.S.C. 791a *et seq.*

<sup>6</sup> 15 U.S.C. 717 *et seq.*

<sup>7</sup> 15 U.S.C. 3301 *et seq.*

<sup>8</sup> 49 App. U.S.C. 1 *et seq.* (1988).

<sup>9</sup> 28 U.S.C. 2461 note, at (5)(b)(1).

<sup>10</sup> See, e.g., Memorandum from Mick Mulvaney, Office of Management and Budget, Implementation of the Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 1 (Dec. 15, 2017).

<sup>11</sup> *Id.* (5)(a).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* (6).

<sup>14</sup> *Id.* (3)(b)(2).

<sup>15</sup> 5 U.S.C. 601 *et seq.*

<sup>16</sup> 5 U.S.C. 603, 604.

<sup>17</sup> 44 U.S.C. 3507(d).

## VII. Effective Date and Congressional Notification

15. For the same reasons the Commission has determined that public notice and comment are unnecessary, impractical, and contrary to the public interest, the Commission finds good cause to adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the Administrative Procedure Act,<sup>18</sup> and therefore, the regulation is effective upon publication in the **Federal Register**.

16. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a “major rule” as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

### List of Subjects

#### 18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

#### 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Issued: January 8, 2018.

**Kimberly D. Bose**,  
Secretary.

In consideration of the foregoing, the Commission amends parts 250 and 385, chapter I, title 18, *Code of Federal Regulations* as follows:

### PART 250—FORMS

■ 1. The authority citation for part 250 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 28 U.S.C. 2461 note.

■ 2. Amend § 250.16 by revising paragraph (e)(1) to read as follows:

#### § 250.16 Format of compliance plan transportation services and affiliate transactions.

\* \* \* \* \*

(e) \* \* \* (1) Any person who transports gas for others pursuant to subparts B or G of part 284 of this chapter and who knowingly violates the requirements of §§ 358.4 and 358.5, § 250.16, or § 284.13 of this chapter will be subject, pursuant to sections 311(c),

501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than \$1,238,271 for any one violation.

\* \* \* \* \*

### PART 385—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 385 continues to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988); 28 U.S.C. 2461 note (1990); 28 U.S.C. 2461 note (2015).

■ 4. Revise § 385.1504(a) to read as follows:

#### § 385.1504 Maximum civil penalty (Rule 1504).

(a) Except as provided in paragraph (b) of this section, the Commission may assess a civil penalty of up to \$22,363 for each day that the violation continues.

\* \* \* \* \*

■ 5. Revise § 385.1602 to read as follows:

#### § 385.1602 Civil penalties, as adjusted (Rule 1602).

The current inflation-adjusted civil monetary penalties provided by law within the jurisdiction of the Commission are:

(a) 15 U.S.C. 3414(b)(6)(A)(i), Natural Gas Policy Act of 1978: \$1,238,271.

(b) 16 U.S.C. 823b(c), Federal Power Act: \$22,363 per day.

(c) 16 U.S.C. 825n(a), Federal Power Act: \$2,852.

(d) 16 U.S.C. 825o–1(b), Federal Power Act: \$1,238,271 per day.

(e) 15 U.S.C. 717t–1, Natural Gas Act: \$1,238,271 per day.

(f) 49 App. U.S.C. 6(10) (1988), Interstate Commerce Act: \$1,296 per offense and \$65 per day after the first day.

(g) 49 App. U.S.C. 16(8) (1988), Interstate Commerce Act: \$12,964 per day.

(h) 49 App. U.S.C. 19a(k) (1988), Interstate Commerce Act: \$1,296 per day.

(i) 49 App. U.S.C. 20(7)(a) (1988), Interstate Commerce Act: \$1,296 per day.

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 16

[Docket No. TTB–2018–0002; Notice No. 171]

#### Civil Monetary Penalty Inflation Adjustment—Alcoholic Beverage Labeling Act

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notification of civil monetary penalty adjustment.

**SUMMARY:** This document informs the public that the maximum penalty for violations of the Alcoholic Beverage Labeling Act (ABLA) is being adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Prior to the publication of this document, any person who violated the provisions of the ABLA was subject to a civil penalty of not more than \$20,111, with each day constituting a separate offense. This document announces that this maximum penalty is being increased to \$20,521.

**DATES:** The new maximum civil penalty for violations of the ABLA takes effect on January 12, 2018 and applies to penalties that are assessed after that date.

**FOR FURTHER INFORMATION CONTACT:** Rita D. Butler, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; (202) 453–1039, ext. 101.

#### SUPPLEMENTARY INFORMATION:

##### Background

##### Statutory Authority for Federal Civil Monetary Penalty Inflation Adjustments

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, section 701, 129 Stat. 584, requires the regular adjustment and evaluation of civil monetary penalties to maintain their deterrent effect and helps to ensure that penalty amounts imposed by the Federal Government are properly accounted for and collected. A “civil monetary penalty” is defined in the Inflation Adjustment Act as any penalty, fine, or other such sanction that is: (1) For a specific monetary amount as provided by Federal law, or has a

<sup>18</sup> 5 U.S.C. 553(d)(3).