

fuselage stringer STR37 between fuselage station (STA) STA6805 and STA7305, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100-53-130, dated December 1, 2015.

(1) For airplanes having 45,000 or more total flight cycles as of the effective date of this AD, since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness: Do the high and low frequency eddy current inspections within 750 flight cycles after the effective date of this AD.

(2) For airplanes having 40,000 or more total flight cycles, but less than 45,000 total flight cycles as of the effective date of this AD, since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness: Do the high and low frequency eddy current inspections within 1,500 flight cycles after the effective date of this AD.

#### (h) Corrective Action

If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA).

#### (i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1137; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or EASA; or Fokker Services B.V.'s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

#### (j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016-0029R1, dated November 17, 2016, for related information. This MCAI may be found in the AD docket on the Internet at

<http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-9058.

#### (k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker Service Bulletin SBF100-53-130, dated December 1, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone: +31 (0)88-6280-350; fax: +31 (0)88-6280-111; email: [technicalservices@fokker.com](mailto:technicalservices@fokker.com); Internet <http://www.myfokkerfleet.com>.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on December 27, 2016.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 201

[Release Nos. 33-10276; 34-79749; IA-4599; IC-32414]

### Adjustments to Civil Monetary Penalty Amounts

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (the "Commission") is adopting a final rule to implement the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the "2015 Act"), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the "Inflation Adjustment Act"), as previously amended by the Debt Collection Improvement Act of 1996 (the "DCIA"). The 2015 Act requires all agencies to annually adjust for inflation the civil

monetary penalties that can be imposed under the statutes administered by the agency. Pursuant to this requirement, this final rule performs the first annual adjustment for inflation of the maximum amount of civil monetary penalties administered by the Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002. This adjustment will apply to all penalties imposed after the effective date of this final rule for violations after November 2, 2015. For violations that occurred on or before November 2, 2015, the Commission is reinstating the penalty amounts in the Commission's prior penalty adjustments performed under the DCIA.

**DATES:** *Effective Date:* January 18, 2017.

#### FOR FURTHER INFORMATION CONTACT:

James A. Cappoli, Assistant General Counsel, Office of the General Counsel, at (202) 551-7923, or Stephen M. Ng, Senior Counsel, Office of the General Counsel, at (202) 551-7957.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

This final rule implements the 2015 Act,<sup>1</sup> which amended the Inflation Adjustment Act.<sup>2</sup> The Inflation Adjustment Act previously had been amended by the DCIA<sup>3</sup> to require that each federal agency adopt regulations at least once every four years that adjust for inflation the civil monetary penalties ("CMPs") that could be imposed under the statutes administered by the agency. Pursuant to the requirements of the DCIA, the Commission previously adopted regulations in 1996, 2001, 2005, 2009, and 2013 to adjust the maximum amount of the CMPs that could be imposed under the statutes the Commission administers.<sup>4</sup>

<sup>1</sup> Public Law 114-74 Sec. 701, 129 Stat. 599-601 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

<sup>2</sup> Public Law 101-410, 104 Stat. 890-892 (1990), codified at 28 U.S.C. 2461 note.

<sup>3</sup> Public Law 104-134, Title III, § 31001(s)(1), 110 Stat. 1321-373 (1996), codified at 28 U.S.C. 2461 note.

<sup>4</sup> See Release Nos. 33-7361, 34-37912, IA-1596, IC-22310, dated November 1, 1996 (effective December 9, 1996), previously found at 17 CFR 201.1001 and Table I to Subpart E of Part 201; Release Nos. 33-7946, 34-43897, IA-1921, IC-24846, dated January 31, 2001 (effective February 2, 2001), previously found at 17 CFR 201.1002 and Table II to Subpart E of Part 201; Release Nos. 33-8530, 34-51136, IA-2348, IC-26748, dated February 9, 2005 (effective February 14, 2005), previously found at 17 CFR 201.1003 and Table III to Subpart E of Part 201; Release Nos. 33-9009, 34-59449, IA-2845, IC-28635, dated February 25, 2009 (effective March 3, 2009), previously found at 17

The 2015 Act replaces the inflation adjustment mechanism prescribed in the DCIA with a new mechanism for calculating the inflation-adjusted amount of CMPs. Each agency was first required to use this new mechanism to adjust the maximum amount of its CMPs<sup>5</sup> in an initial “catch-up” adjustment.<sup>6</sup> Pursuant to this requirement, the Commission issued an interim final rule adjusting its CMPs on June 27, 2016 (the “June 2016 interim final rule”).<sup>7</sup> After performing the catch-up adjustment, each agency must now perform annual adjustments for inflation, and publish these adjustments in the **Federal Register** by January 15 of each calendar year.<sup>8</sup>

A CMP is defined in relevant part as any penalty, fine, or other sanction that: (1) Is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.<sup>9</sup> This definition applies to the monetary penalty provisions contained in four statutes administered by the Commission: The Securities Act of 1933; the Securities Exchange Act of 1934 (the “Exchange Act”); the Investment Company Act of 1940; and

the Investment Advisers Act of 1940. In addition, the Sarbanes-Oxley Act of 2002 provides the Public Company Accounting Oversight Board (the “PCAOB”) authority to levy civil monetary penalties in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).<sup>10</sup> The definition of a CMP in the Inflation Adjustment Act encompasses such civil monetary penalties.<sup>11</sup>

**II. Adjusting the Commission’s Penalty Amounts for Inflation**

This final rule implements the first of the required annual adjustments under the 2015 Act for all penalties under the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act, and certain penalties under the Sarbanes-Oxley Act.

As the baseline in calculating these new penalty amounts, the Commission uses the penalty amounts in the Commission’s June 2016 interim final rule. The penalty amounts in that interim final rule used the new inflation adjustment mechanism in the 2015 Act as part of the “catch-up adjustment” required by that Act. The Commission affirms that the amounts in the June 2016 interim final rule were correct and

that the adjusted amounts were appropriate.<sup>12</sup>

Pursuant to the 2015 Act, the Commission now adjusts the penalty amounts in the June 2016 interim final rule by multiplying these amounts by the percentage change between the Consumer Price Index for all Urban Consumers (“CPI-U”) for October 2015, and the October 2016 CPI-U.<sup>13</sup> OMB has provided its calculation of this multiplier (the “CPI-U Multiplier”) to agencies.<sup>14</sup> After multiplying the June 2016 interim final rule amounts by this multiplier, the Commission must round all penalty amounts to the nearest dollar to determine the new inflation-adjusted penalty amounts.

For example, the CMP for certain insider trading violations by controlling persons under Exchange Act Section 21A(a)(3)<sup>15</sup> was readjusted for inflation on August 1, 2016, to \$1,978,690. To determine the new CMP under this provision, the Commission multiplies the current CMP by the CPI-U Multiplier of 1.01636, and rounds to the nearest dollar. Thus, the new CMP for Exchange Act Section 21A(a)(3) is \$2,011,061.

Below is the Commission’s calculation of the new penalty amounts for the penalties it administers.

U.S. code citation	Civil monetary penalty description	Penalty amounts in June 2016 interim final rule	CPI-U multiplier	New adjusted penalty amounts
15 U.S.C. 77h-1(g) (Securities Act Sec. 8A(g)).	For natural person .....	\$8,156	1.01636	\$8,289
	For any other person .....	81,559	1.01636	82,893
	For any other person/fraud .....	407,794	1.01636	414,466
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	163,118	1.01636	165,787
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	788,401	1.01636	801,299
15 U.S.C. 77t(d) (Securities Act Sec. 20(d)).	For natural person .....	8,908	1.01636	9,054
	For any other person .....	89,078	1.01636	90,535
	For natural person/fraud .....	89,078	1.01636	90,535
	For any other person/fraud .....	445,390	1.01636	452,677

CFR 201.1004 and Table IV to Subpart E of Part 201; and Release Nos. 33-9387, 34-68994, IA-3557, IC-30408, dated February 27, 2013 (effective March 5, 2013), previously found at 17 CFR 201.1005 and Table V to Subpart E of Part 201.

<sup>5</sup> The 2015 Act also applies to minimum penalty amounts and penalty ranges. See 28 U.S.C. 2461 note Sec. 5(a). All of the statutes administered by the Commission, however, only include maximum penalty amounts. Thus, in this final rule, we only refer to the effect of the 2015 Act on maximum penalty amounts.

<sup>6</sup> 28 U.S.C. 2461 note Sec. 4(b)(1); Office of Management and Budget, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (February 24, 2016) (“2016 OMB Guidance”) at 1, available at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

<sup>7</sup> Release Nos. 33-10104; 34-78156; IA-4437; IC-32162 (June 27, 2016).

<sup>8</sup> 28 U.S.C. 2461 note Sec. 4; 2016 OMB Guidance at 4.

<sup>9</sup> 28 U.S.C. 2461 note Sec. 3(2).

<sup>10</sup> 15 U.S.C. 7215(c)(4)(D).

<sup>11</sup> The Commission may by order affirm, modify, remand, or set aside sanctions, including civil monetary penalties, imposed by the PCAOB. See Section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in federal district court pursuant to Section 21(e) of the Securities Exchange Act of 1934. As a result, penalties assessed by the PCAOB in its disciplinary proceedings are penalties “enforced” by the Commission for purposes of the Inflation Adjustment Act. See *Adjustments to Civil Monetary Penalty Amounts*, Release No. 33-8530 (Feb. 4, 2005) [70 FR 7606 (Feb. 14, 2005)].

<sup>12</sup> The 2015 Act provided that agencies could seek approval from OMB to reduce the amount of the catch-up adjustment required by the 2015 Act (a “reduced catch-up determination”) if: (1) The otherwise required increase of the maximum amount of the CMPs administered by the agency would have a negative economic impact, or (2) the social costs of adopting the otherwise required

increase of the maximum amount of these CMPs would outweigh the benefits. See 28 U.S.C. 2461 note Sec. 4(c); 2016 OMB Guidance at 3. As part of the June 2016 interim final rule, the Commission determined that it was not necessary to seek a reduced catch-up adjustment determination, but requested comments on whether the Commission should reconsider this decision. See Release No. 33-10104 at 8. The Commission did not receive any comments on this topic and the Commission affirms its decision not to seek a reduced catch-up adjustment determination.

<sup>13</sup> 28 U.S.C. 2461 note Sec. 5.

<sup>14</sup> Office of Management and Budget, Implementation of the 2017 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 16, 2016) (“2017 OMB Guidance”) at 1, available at [https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11\\_0.pdf](https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf).

<sup>15</sup> 15 U.S.C. 78u-1(a)(3).

U.S. code citation	Civil monetary penalty description	Penalty amounts in June 2016 interim final rule	CPI-U multiplier	New adjusted penalty amounts
15 U.S.C. 78u(d)(3) (Exchange Act Sec. 21(d)(3)).	For natural person/fraud/substantial losses or risk of losses to others.	178,156	1.01636	181,071
	For any other person/fraud/substantial losses or risk of losses to others.	890,780	1.01636	905,353
	For natural person .....	8,908	1.01636	9,054
	For any other person .....	89,078	1.01636	90,535
	For natural person/fraud .....	89,078	1.01636	90,535
	For any other person/fraud .....	445,390	1.01636	452,677
15 U.S.C. 78u-1(a)(3) (Exchange Act Sec. 21A(a)(3)).	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	178,156	1.01636	181,071
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	890,780	1.01636	905,353
	Insider Trading—controlling person .....	1,978,690	1.01636	2,011,061
15 U.S.C. 78u-2 (Exchange Act Sec. 21B).	For natural person .....	8,908	1.01636	9,054
	For any other person .....	89,078	1.01636	90,535
	For natural person/fraud .....	89,078	1.01636	90,535
	For any other person/fraud .....	445,390	1.01636	452,677
	For natural person/fraud/substantial losses or risk of losses to others.	178,156	1.01636	181,071
15 U.S.C. 78ff(b) (Exchange Act Sec. 32(b)).	For any other person/fraud/substantial losses or risk of losses to others.	890,780	1.01636	905,353
	Exchange Act/failure to file information documents, reports.	525	1.01636	534
15 U.S.C. 78ff(c)(1)(B) (Exchange Act Sec. 32(c)(1)(B)).	Foreign Corrupt Practices—any issuer .....	19,787	1.01636	20,111
15 U.S.C. 78ff(c)(2)(B) (Exchange Act Sec. 32(c)(2)(B)).	Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer.	19,787	1.01636	20,111
15 U.S.C. 80a-9(d) (Investment Company Act Sec. 9(d)).	For natural person .....	8,908	1.01636	9,054
	For any other person .....	89,078	1.01636	90,535
	For natural person/fraud .....	89,078	1.01636	90,535
	For any other person/fraud .....	445,390	1.01636	452,677
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	178,156	1.01636	181,071
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	890,780	1.01636	905,353
15 U.S.C. 80a-41(e) (Investment Company Act Sec. 42(e)).	For natural person .....	8,908	1.01636	9,054
	For any other person .....	89,078	1.01636	90,535
	For natural person/fraud .....	89,078	1.01636	90,535
	For any other person/fraud .....	445,390	1.01636	452,677
	For natural person/fraud/substantial losses or risk of losses to others.	178,156	1.01636	181,071
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	890,780	1.01636	905,353
15 U.S.C. 80b-3(i) (Investment Advisers Act Sec. 203(i)).	For natural person .....	8,908	1.01636	9,054
	For any other person .....	89,078	1.01636	90,535
	For natural person/fraud .....	89,078	1.01636	90,535
	For any other person/fraud .....	445,390	1.01636	452,677
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	178,156	1.01636	181,071
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	890,780	1.01636	905,353
15 U.S.C. 80b-9(e) (Investment Advisers Act Sec. 209(e)).	For natural person .....	8,908	1.01636	9,054
	For any other person .....	89,078	1.01636	90,535
	For natural person/fraud .....	89,078	1.01636	90,535
	For any other person/fraud .....	445,390	1.01636	452,677
	For natural person/fraud/substantial losses or risk of losses to others.	178,156	1.01636	181,071
	For any other person/fraud/substantial losses or risk of losses to others.	890,780	1.01636	905,353
15 U.S.C. 7215(c)(4)(D)(i) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(i)).	For natural person .....	131,185	1.01636	133,331
	For any other person .....	2,623,700	1.01636	2,666,624
15 U.S.C. 7215(c)(4)(D)(ii) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(ii)).	For natural person .....	983,888	1.01636	999,984
	For any other person .....	19,677,750	1.01636	19,999,678

Pursuant to the 2015 Act, the Commission has determined that the adjusted penalty amounts in this final

rule (and all penalty adjustments performed pursuant to the 2015 Act) will apply to penalties imposed after the

effective date of the adjustment for violations that occurred after November 2, 2015, the 2015 Act's enactment date.

Consistent with this determination, the Commission is reinstating the penalty amounts contained in its prior penalty adjustments under the DCIA for violations that occurred from December 10, 1996, through November 2, 2015.<sup>16</sup>

The Commission's prior penalty adjustments under the DCIA were previously included in the Code of Federal Regulations at 17 CFR 201.1001 through 1005 and Tables I through V to Subpart E. In the June 2016 interim final rule, Section 201.1001 and Table I were replaced with the new penalty amounts from the interim final rule, and Sections 201.1002 through 201.1005 and Tables II to V were removed. As part of this final rule, the information in these tables will be added back into the Code of Federal Regulations. However, for ease of reference, the information in these tables will be consolidated and included in a single section (17 CFR 201.1001(a) and Table (Table I to Section 201.1001)).

Further, each penalty adjustment performed pursuant to the 2015 Act supersedes the prior adjustments under that Act. Thus, the penalty amounts in this final rule supersede the amounts in the June 2016 interim final rule (except that for the first day this final rule is effective, the prior year's penalty amounts shall apply, *see* 28 U.S.C. 2461 note Sec. 6). Because of this, the amounts in the June 2016 interim final rule will be removed from the Code of Federal Regulations. The penalty amounts in this final rule, however, need only be published in the **Federal Register** and will not be added to the Code of Federal Regulations, in accordance with the 2015 Act and OMB guidance.<sup>17</sup> As a result, the Commission is amending 17 CFR 201.1001 to add subsection (b) to indicate that all penalty adjustments performed under the 2015 Act will be published in the **Federal Register** and will be made available on the Commission's Web site.<sup>18</sup> This framework will avoid the necessity of revising the Code of Federal Regulations every year to include the new inflation-adjusted penalty amounts.

<sup>16</sup> One commenter to the June 2016 interim final rule requested that the Commission re-evaluate the application of the adjusted penalty amounts included in that interim final rule to violations that occurred before the enactment of the 2015 Act (*see* Ltr. from Wilmer Cutler Pickering Hale and Dorr LLP, Aug. 15, 2016). Our determination to apply the penalty amounts in this final rule to violations that occurred after November 2, 2015, renders the commenter's request moot. As explained below, the penalty amounts in this final rule supersede the penalty amounts in the June 2016 interim final rule.

<sup>17</sup> 28 U.S.C. 2461 note Sec. 4(a)(2); 2017 OMB Guidance at 3.

<sup>18</sup> The Web site will also list the penalty amounts for violations that occurred on or before November 2, 2015.

Section 201.1001(b) will also clarify that penalty adjustments performed pursuant to the 2015 Act will only apply to violations that occurred after November 2, 2015, the enactment date of the 2015 Act.

### III. Procedural and Other Matters

The Commission is required by the 2015 Act to adjust the CMPs within its jurisdiction for inflation using a statutorily prescribed formula and the 2015 Act mandates that agencies perform this adjustment annually by January 15th of each year.<sup>19</sup> The 2015 Act further provides that these annual adjustments shall be made "notwithstanding section 553 of title 5, United States Code."<sup>20</sup> In light of this Congressional mandate, the Commission is not required to provide for public notice and comment pursuant to the notice and comment provisions of the Administrative Procedure Act.<sup>21</sup> Under the Regulatory Flexibility Act, a regulatory flexibility analysis is required only when an agency must publish a general notice of proposed rulemaking.<sup>22</sup> Because public notice and comment is not required for this final rule, a regulatory flexibility analysis is not required. Further, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.<sup>23</sup>

### IV. Economic Analysis<sup>24</sup>

The Commission is sensitive to the costs and benefits that result from its rules. This regulation merely adjusts CMPs for inflation as required by the 2015 Act. It has no impact on disclosure or compliance costs. The Commission further notes that the CMPs ordered in SEC proceedings and PCAOB disciplinary proceedings in fiscal year 2016 totaled approximately \$1.28 billion. The inflationary adjustment required by the 2015 Act results in the increase of the maximum amount of the CMPs administered by the Commission of 1.636%. Assuming that the Commission is successful in obtaining civil monetary penalties in fiscal year

2017 in similar proportion to that obtained in fiscal year 2016, the inflationary adjustment pursuant to this final rule would result in an increase in the CMPs ordered of approximately \$21 million.

This potential increase, however, overstates the effect of the rule. First, this figure represents the amount of penalties that could be potentially ordered, whereas the amount of penalties collected in any given year—the amount of penalties that would affect the economy—can be lower than the ordered amount. Second, the adjusted penalty amounts will not apply to all penalties ordered, but rather only to those penalties whose associated violations occurred after November 2, 2015. Third, penalties imposed in insider trading cases brought in district court are based on the profit gained or loss avoided as a result of the violation rather than by reference to a statutory dollar amount that is affected by this regulation.<sup>25</sup> The average annual amount of penalties obtained in insider trading cases from FY 2010 through FY 2016 is \$95.7 million. Third, in many cases where the Commission has obtained large civil monetary penalties, such penalties were calculated on the basis of the defendant's gross pecuniary gain rather than the maximum penalty dollar amount set by statute that will be adjusted by the proposed rule.<sup>26</sup> In addition, the intent of the new regulation is merely to keep pace with changes in the economy, not to impose new costs. Therefore, for the instances in which CMPs affected by this rulemaking are imposed, the Commission does not believe that adjusting civil monetary penalties pursuant to the 2015 Act will significantly affect the amount of penalties it obtains beyond that necessary to keep pace with inflation.

The benefit provided by the inflationary adjustment to the maximum CMPs is that of maintaining the level of deterrence effectuated by the CMPs, and not allowing such deterrent effect to be diminished by inflation. The costs of implementing this rule should be negligible because the only change from the current, baseline situation is determining potential penalties using a new maximum dollar amount.

<sup>25</sup> 15 U.S.C. 78u-1(a)(2).

<sup>26</sup> For example, 15 U.S.C. 77t(d)(2)(A), after adjusting for inflation as required by the 2015 Act, provides that the amount of the penalty shall not exceed the greater of \$9,054 for a natural person or \$90,535 for any other person, or the gross amount of pecuniary gain to such defendant as a result of the violation.

<sup>19</sup> 28 U.S.C. 2461 note Sec. 4(a).

<sup>20</sup> 28 U.S.C. 2461 note Sec. 4(b)(2).

<sup>21</sup> 5 U.S.C. 553(b)(3)(B). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines).

<sup>22</sup> 5 U.S.C. 603.

<sup>23</sup> 44 U.S.C. 3501 *et. seq.*

<sup>24</sup> The Commission did not receive any comments on the economic analysis in the June 2016 interim final rule.

**V. Statutory Basis**

The Commission is adopting these revisions to 17 CFR part 201, subpart E pursuant to the directives and authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890-892 (1990), codified at 28 U.S.C. 2461 note, as amended.

**List of Subjects in 17 CFR Part 201**

Administrative practice and procedure, Claims, Confidential business information, Lawyers, Penalties, Securities.

**Text of Amendment**

For the reasons set forth in the preamble, part 201, title 17, chapter II of the Code of Federal Regulations is amended as follows:

**PART 201—RULES OF PRACTICE**

**Subpart E—Adjustment of Civil Monetary Penalties**

■ 1. The authority citation for Part 201, Subpart E continues to read as follows:

**Authority:** 28 U.S.C. 2461 note.

■ 2. Revise 201.1001 to read as follows:

**§ 201.1001 Adjustment of civil monetary penalties.**

(a) For violations from December 10, 1996, through November 2, 2015: As required by the Inflation Adjustment Act of 1990, as amended by the Debt

Collection Improvement Act of 1996, the Commission has adjusted the maximum amounts of all civil monetary penalties it administers under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002 for inflation in the releases and prior regulations listed in the footnotes to Table I. The penalty amounts provided in Table I apply to violations of these statutes that occurred from December 10, 1996, through November 2, 2015, with each column listing the penalty amounts for violations that occurred in a particular time frame. To determine the penalty amounts for violations that occurred prior to December 10, 1996, please refer to the applicable statutory text. To determine penalty amounts for violations after November 2, 2015, please refer to paragraph (b) of this section.

(b) For violations after November 2, 2015: The Federal Civil Penalties Inflation Adjustment Act, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. 2461 note), requires that civil monetary penalties be adjusted on an annual basis for inflation. Pursuant to this requirement, the maximum amounts of all civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the

Investment Company Act of 1940, and the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002 will be adjusted annually for inflation. Notice of these adjusted penalty amounts will be published by the Commission in the **Federal Register** on or before January 15 of each calendar year and will be available, along with the Commission's prior inflation adjustments, on the Commission's Web site at <https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.htm>. The adjusted penalty amounts will apply to all penalties imposed after the effective date of the adjustment (for the first day the adjustment is effective, the prior year's penalty amounts shall apply), for violations that occurred after November 2, 2015. The adjusted penalty amount each year will be the larger of:

(1) The maximum penalty amount for the previous calendar year; or

(2) An amount adjusted for inflation, calculated by multiplying the maximum penalty amount for the previous calendar year by the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the current calendar year exceeds the CPI-U for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

**TABLE I TO 201.1001—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS FOR VIOLATIONS FROM DECEMBER 10, 1996, THROUGH NOVEMBER 2, 2015**

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty				
		Dec. 10, 1996–Feb. 2, 2001 <sup>i</sup>	Feb. 3, 2001–Feb. 14, 2005 <sup>ii</sup>	Feb. 15, 2005–Mar. 3, 2009 <sup>iii</sup>	Mar. 4, 2009–Mar. 5, 2013 <sup>iv</sup>	Mar. 6, 2013–Nov. 2, 2015 <sup>v</sup>
15 U.S.C. 77h-1(g) (Securities Act Sec. 8A(g)).	For natural person .....	N/A	N/A	N/A	<sup>vi</sup> \$7,500	\$7,500
	For any other person .....	N/A	N/A	N/A	<sup>vi</sup> 75,000	80,000
	For natural person/fraud .....	N/A	N/A	N/A	<sup>vi</sup> 75,000	80,000
	For any other person/fraud .....	N/A	N/A	N/A	<sup>vi</sup> 375,000	400,000
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	N/A	N/A	N/A	<sup>vi</sup> 150,000	160,000
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	N/A	N/A	N/A	<sup>vi</sup> 725,000	775,000
15 U.S.C. 77t(d) (Securities Act Sec. 20(d)).	For natural person .....	\$5,500	\$6,500	\$6,500	7,500	7,500
	For any other person .....	55,000	60,000	65,000	75,000	80,000
	For natural person/fraud .....	55,000	60,000	65,000	75,000	80,000
	For any other person/fraud .....	275,000	300,000	325,000	375,000	400,000
	For natural person/fraud/substantial losses or risk of losses to others.	110,000	120,000	130,000	150,000	160,000
	For any other person/fraud/substantial losses or risk of losses to others.	550,000	600,000	650,000	725,000	775,000
15 U.S.C. 78u(d)(3) (Exchange Act Sec. 21(d)(3)).	For natural person .....	5,500	6,500	6,500	7,500	7,500
	For any other person .....	55,000	60,000	65,000	75,000	80,000
	For natural person/fraud .....	55,000	60,000	65,000	75,000	80,000
	For any other person/fraud .....	275,000	300,000	325,000	375,000	400,000

TABLE I TO 201.1001—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS FOR VIOLATIONS FROM DECEMBER 10, 1996, THROUGH NOVEMBER 2, 2015—Continued

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty				
		Dec. 10, 1996–Feb. 2, 2001 <sup>i</sup>	Feb. 3, 2001–Feb. 14, 2005 <sup>ii</sup>	Feb. 15, 2005–Mar. 3, 2009 <sup>iii</sup>	Mar. 4, 2009–Mar. 5, 2013 <sup>iv</sup>	Mar. 6, 2013–Nov. 2, 2015 <sup>v</sup>
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	110,000	120,000	130,000	150,000	160,000
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	550,000	600,000	650,000	725,000	775,000
15 U.S.C. 78u–1(a)(3) (Exchange Act Sec. 21A(a)(3)).	Insider Trading—controlling person.	1,100,000	1,200,000	1,275,000	1,425,000	1,525,000
15 U.S.C. 78u–2 (Exchange Act Sec. 21B).	For natural person .....	5,500	6,500	6,500	7,500	7,500
	For any other person .....	55,000	60,000	65,000	75,000	80,000
	For natural person/fraud .....	55,000	60,000	65,000	75,000	80,000
	For any other person/fraud .....	275,000	300,000	325,000	375,000	400,000
	For natural person/fraud/substantial losses or risk of losses to others.	110,000	120,000	130,000	150,000	160,000
	For any other person/fraud/substantial losses or risk of losses to others.	550,000	600,000	650,000	725,000	775,000
15 U.S.C. 78ff(b) (Exchange Act Sec. 32(b)).	Exchange Act/failure to file information documents, reports.	110	110	110	110	210
15 U.S.C. 78ff(c)(1)(B) (Exchange Act Sec. 32(c)(1)(B)).	Foreign Corrupt Practices—any issuer.	11,000	11,000	11,000	16,000	16,000
15 U.S.C. 78ff(c)(2)(B) (Exchange Act Sec. 32(c)(2)(B)).	Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer.	11,000	11,000	11,000	16,000	16,000
15 U.S.C. 80a–9(d) (Investment Company Act Sec. 9(d)).	For natural person .....	5,500	6,500	6,500	7,500	7,500
	For any other person .....	55,000	60,000	65,000	75,000	80,000
	For natural person/fraud .....	55,000	60,000	65,000	75,000	80,000
	For any other person/fraud .....	275,000	300,000	325,000	375,000	400,000
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	110,000	120,000	130,000	150,000	160,000
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	550,000	600,000	650,000	725,000	775,000
15 U.S.C. 80a–41(e) (Investment Company Act Sec. 42(e)).	For natural person .....	5,500	6,500	6,500	7,500	7,500
	For any other person .....	55,000	60,000	65,000	75,000	80,000
	For natural person/fraud .....	55,000	60,000	65,000	75,000	80,000
	For any other person/fraud .....	275,000	300,000	325,000	375,000	400,000
	For natural person/fraud/substantial losses or risk of losses to others.	110,000	120,000	130,000	150,000	160,000
	For any other person/fraud/substantial losses or risk of losses to others.	550,000	600,000	650,000	725,000	775,000
15 U.S.C. 80b–3(i) (Investment Advisers Act Sec. 203(i)).	For natural person .....	5,500	6,500	6,500	7,500	7,500
	For any other person .....	55,000	60,000	65,000	75,000	80,000
	For natural person/fraud .....	55,000	60,000	65,000	75,000	80,000
	For any other person/fraud .....	275,000	300,000	325,000	375,000	400,000
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	110,000	120,000	130,000	150,000	160,000
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	550,000	600,000	650,000	725,000	775,000
15 U.S.C. 80b–9(e) (Investment Advisers Act Sec. 209(e)).	For natural person .....	5,500	6,500	6,500	7,500	7,500
	For any other person .....	55,000	60,000	65,000	75,000	80,000
	For natural person/fraud .....	55,000	60,000	65,000	75,000	80,000
	For any other person/fraud .....	275,000	300,000	325,000	375,000	400,000
	For natural person/fraud/substantial losses or risk of losses to others.	110,000	120,000	130,000	150,000	160,000
	For any other person/fraud/substantial losses or risk of losses to others.	550,000	600,000	650,000	725,000	775,000
15 U.S.C. 7215(c)(4)(D)(i) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(i)).	For natural person .....	N/A	vii 100,000	110,000	120,000	130,000
	For any other person .....	N/A	vii 2,000,000	2,100,000	2,375,000	2,525,000

TABLE I TO 201.1001—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS FOR VIOLATIONS FROM DECEMBER 10, 1996, THROUGH NOVEMBER 2, 2015—Continued

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty				
		Dec. 10, 1996–Feb. 2, 2001 <sup>i</sup>	Feb. 3, 2001–Feb. 14, 2005 <sup>ii</sup>	Feb. 15, 2005–Mar. 3, 2009 <sup>iii</sup>	Mar. 4, 2009–Mar. 5, 2013 <sup>iv</sup>	Mar. 6, 2013–Nov. 2, 2015 <sup>v</sup>
15 U.S.C. 7215(c)(4)(D)(ii) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(ii)).	For natural person .....	N/A	<sup>vii</sup> 750,000	800,000	900,000	950,000
	For any other person .....	N/A	<sup>vii</sup> 15,000,000	15,825,000	17,800,000	18,925,000

<sup>i</sup> Release Nos. 33–7361, 34–37912, IA–1596, IC–22310, dated November 1, 1996 (effective December 9, 1996), previously found at 17 CFR 201.1001 and Table I to Subpart E of Part 201.

<sup>ii</sup> Release Nos. 33–7946, 34–43897, IA–1921, IC–24846, dated January 31, 2001 (effective February 2, 2001), previously found at 17 CFR 201.1002 and Table II to Subpart E of Part 201.

<sup>iii</sup> Release Nos. 33–8530, 34–51136, IA–2348, IC–26748, dated February 9, 2005 (effective February 14, 2005), previously found at 17 CFR 201.1003 and Table III to Subpart E of Part 201.

<sup>iv</sup> Release Nos. 33–9009, 34–59449, IA–2845, IC–28635, dated February 25, 2009 (effective March 3, 2009), previously found at 17 CFR 201.1004 and Table IV to Subpart E of Part 201.

<sup>v</sup> Release Nos. 33–9387, 34–68994, IA–3557, IC–30408, dated February 27, 2013 (effective March 5, 2013), previously found at 17 CFR 201.1005 and Table V to Subpart E of Part 201.

<sup>vi</sup> Effective from July 21, 2010 (enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203), through March 5, 2013.

<sup>vii</sup> Effective from July 30, 2002 (enactment of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204), through February 14, 2005.

By the Commission.  
January 6, 2017.  
**Brent J. Fields,**  
*Secretary.*  
[FR Doc. 2017–00421 Filed 1–13–17; 8:45 am]  
BILLING CODE 8011–01–P

Occupational Safety and Health Administration, Employee Benefits Security Administration, and Mine Safety and Health Administration, Department of Labor.

**ACTION:** Final rule.

calling (202) 693–5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

**SUPPLEMENTARY INFORMATION:**

**Preamble Table of Contents**

- I. Background
- II. Adjustment for 2017
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- IV. Paperwork Reduction Act
- V. Administrative Procedure Act
- VI. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review
- VII. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
- VIII. Other Regulatory Considerations
  - A. The Unfunded Mandates Reform Act of 1995
  - B. Executive Order 13132: Federalism
  - C. Executive Order 13175: Indian Tribal Governments
  - D. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
  - E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - F. Environmental Impact Assessment
  - G. Executive Order 13211: Energy Supply
  - H. Executive Order 12630: Constitutionally Protected Property Rights
  - I. Executive Order 12988: Civil Justice Reform Analysis

**I. Background**

On November 2, 2015, Congress enacted the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (Inflation Adjustment Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 as previously amended by the 1996 Debt Collection Improvement Act (collectively, the “Prior Inflation Adjustment Act”), to improve the

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Part 655**

**Office of Workers’ Compensation Programs**

**20 CFR Parts 702, 725, and 726**

**Wage and Hour Division**

**29 CFR Parts 500, 501, 530, 570, 578, 579, 801, and 825**

**Occupational Safety and Health Administration**

**29 CFR Part 1903**

**Employee Benefits Security Administration**

**29 CFR Part 2560, 2575, and 2590**

**Mine Safety and Health Administration**

**30 CFR Part 100**

RIN 1290–AA31

**Department of Labor Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2017**

**AGENCY:** Employment and Training Administration, Office of Workers’ Compensation Programs, Office of the Secretary, Wage and Hour Division,

**SUMMARY:** The U.S. Department of Labor (Department) is publishing this final rule to adjust for inflation the civil monetary penalties assessed or enforced in its regulations, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). The Inflation Adjustment Act requires the Department to annually adjust its civil money penalty levels for inflation no later than January 15 of each year. The Inflation Adjustment Act provides that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act (APA). Additionally, the Inflation Adjustment Act provides a cost-of-living formula for adjustment of the civil penalties. Accordingly, this final rule sets forth the Department’s 2017 annual adjustments for inflation to its civil monetary penalties, effective January 13, 2017.

**DATES:** This final rule is effective on January 13, 2017. As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after the effective date of this rule.

**FOR FURTHER INFORMATION CONTACT:** Pamela Peters, Program Analyst, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–5959 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by