

Rules and Regulations

Federal Register

Vol. 82, No. 232

Tuesday, December 5, 2017

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

RIN 0510-AA04

Inflation Catch-Up Adjustment of Civil Monetary Penalty Amounts

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends USDA's civil monetary penalty regulations by making inflation adjustments as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. USDA also removes one obsolete civil monetary penalty (CMP) regulation previously authorized under a statute that is no longer current law.

DATES: Effective December 5, 2017.

FOR FURTHER INFORMATION CONTACT: Heather Self, Esq., OGC, USDA, Room 3311-S, 1400 Independence Avenue SW., Washington, DC 20250-1400, (202) 720-5840.

SUPPLEMENTARY INFORMATION:

I. Background

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), to improve the effectiveness of CMPs and to maintain their deterrent effect. The 2015 Act requires agencies to:

- (1) Adjust the level of CMPs with an initial "catch-up" adjustment through a final rulemaking (FR); and
- (2) Make subsequent annual adjustments for inflation.

Previously, the Inflation Adjustment Act required agencies to adjust CMP levels every 4 years based on the percentage by which the Consumer

Price Index (CPI) for the month of June of the prior calendar year exceeded the CPI for the month of June of the calendar year during which the last adjustment was made. The Inflation Adjustment Act also capped the increase for each adjustment at 10 percent and rounded the adjustment based on the size of the penalty (for example, multiple of \$10 in the case of penalties less than or equal to \$100). The rounding process meant that penalties would often not be increased at all if the inflation factor was not large enough. Furthermore, the cap on increases of 10 percent in tandem with the rounding meant that the formula over time caused penalties to lose value relative to total inflation. The 2015 Act updates these requirements by prescribing that agencies make annual adjustments for inflation based on the CPI for the month of October and round to the nearest dollar after an initial adjustment.

In order to eliminate the inconsistent changes caused by the prior method, the 2015 Act resets the inflation adjustment by excluding prior inflationary adjustments under the Inflation Adjustment Act, which contributed to a decline in the real value of penalty levels. To do this, the 2015 Act provides that the initial adjustment will be the percentage by which the CPI for the month of October 2015 exceeds that of the month of October of the calendar year during which the amount of the CMP was originally established or otherwise adjusted under a provision of law other than the Inflation Adjustment Act. While the 2015 Act does not provide a cap on adjustments going forward, the initial adjustment under the 2015 Act does limit large CMP increases by providing that no initial adjustments may exceed 150 percent of the amount of the CMP as of the date the 2015 Act was enacted, November 2, 2015. Lastly, the 2015 Act requires that agencies publish a final rule with the initial adjustment by July 1, 2016, and have the adjustments take effect no later than August 1, 2016. The initial adjustment under the 2015 Act also provides that, following public comment, the head of an agency may reduce the required increase if the agency head determines that the increase will have a negative economic impact or the social costs of the increase outweigh the benefits and the Director

of the Office of Management and Budget concurs.

II. CMPs Affected by This Final Rule

Several USDA agencies administer laws that provide for the imposition of CMPs being adjusted by this final rule. Those agencies are:

- (1) Agricultural Marketing Service;
- (2) Animal and Plant Health Inspection Service;
- (3) Food and Nutrition Service;
- (4) Food Safety and Inspection Service;
- (5) Forest Service;
- (6) Grain Inspection, Packers and Stockyards Administration;
- (7) Federal Crop Insurance Corporation;
- (8) Rural Housing Service,
- (9) Farm Service Agency,
- (10) Commodity Credit Corporation, and
- (11) Office of the Secretary.

The CMPs in this final rule are listed according to the applicable administering agency.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures contained in 5 U.S.C. 553. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically the rulemaking comports with and is consistent with the statutory authority required by Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, as amended, with no issue of policy discretion. Accordingly, we have determined that opportunity for prior comment is unnecessary and contrary to the public interest, and we are issuing this revised regulation as a final rule that will apply to all future cases.

IV. Procedural Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this regulatory action in accordance with the provisions of Executive Order 12866, Regulatory Planning and Review, and has determined that it does not meet the criteria for significant regulatory action. Additionally, because this rule does not meet the definition of a significant

regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

As indicated above, the provisions of this final rulemaking contain inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The great majority of individuals, organizations, and entities affected participating in the programs affected by this regulation do not engage in prohibited activities and practices that would result in civil monetary penalties being incurred. Accordingly, we believe that any aggregate economic impact of this revised regulation will be minimal, affecting only the limited number of program participants that may engage in prohibited behavior in violation of the statutes.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because USDA was not required to publish notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 7 CFR Part 3

Administrative practice and procedure, Debt management, Penalties.

For the reasons set forth in the preamble, USDA amends 7 CFR part 3 as follows:

PART 3—DEBT MANAGEMENT

Subpart I—Adjusted Civil Monetary Penalties

■ 1. The authority citation for subpart I continues to read as follows:

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

■ 2. Revise § 3.91(a)(1), (2) and (b) to read as follows:

§ 3.91 Adjusted civil monetary penalties.

(a) * * *

(1) *Adjustments.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b) of this section, to take account of inflation as mandated by the Federal Civil Penalties Inflation

Adjustment Act Improvements Act of 2015, as amended.

(2) *Timing.* Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section applies only to violations occurring after December 5, 2017.

* * * * *

(b) *Penalties.*—(1) *Agricultural Marketing Service.*—(i) Civil penalty for improper recordkeeping, codified at 7 U.S.C. 136i–1(d), has: A maximum of \$905 in the case of the first offense, and a minimum of \$1,759 in the case of subsequent offenses, except that the penalty will be less than \$1,759 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of \$4,928.

(iii) Civil penalty for violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of \$1,573 for each such offense and not more than \$393 for each day it continues, or a maximum of \$393 for each offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum penalty of \$3,145 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C. 586, has a minimum of \$144 and a maximum of \$14,372.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of \$275 and a maximum of \$27,500.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of \$2,750. Each day the violation continues is a separate violation.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of \$275.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of \$94 and a maximum of \$1,875.

(x) Civil penalty for failure to collect any assessment or fee for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of \$2,750.

(xi) Civil penalty for failure to pay, collect, or remit any assessment or fee for a violation of a program under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of \$1,232 and a maximum of \$12,319.

(xii) Civil penalty for failure to obey a cease and desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of \$1,232. Each day the violation continues is a separate violation.

(xiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of \$1,425 and a maximum of \$14,023.

(xiv) Civil penalty for failure to obey a cease and desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of \$1,425. Each day the violation continues is a separate violation.

(xv) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of \$11,119.

(xvi) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of \$2,750.

(xvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum of \$1,294 and a maximum of \$12,941.

(xviii) Civil penalty for failure to obey a cease and desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of \$1,294. Each day the violation continues is a separate violation.

(xix) Civil penalty for violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of \$2,393.

(xx) Civil penalty for pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum of \$737 and a maximum of \$7,370.

(xxi) Civil penalty for failure to obey a cease and desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of \$737. Each day the violation continues is a separate violation.

(xxii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of \$2,224.

(xxiii) Civil penalty for failure to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of \$1,112. Each day the violation continues is a separate violation.

(xxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of \$1,112 and a maximum of \$11,119.

(xxv) Civil penalty for failure to obey a cease and desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of \$1,112. Each day the violation continues is a separate violation.

(xxvi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of \$1,811 and a maximum of \$18,107.

(xxvii) Civil penalty for failure to obey a cease and desist order under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of \$1,811.

(xxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of \$880 and a maximum of \$8,797.

(xxix) Civil penalty for failure to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(e), has a maximum of \$880. Each day the violation continues is a separate violation.

(xxx) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of \$880 and a maximum of \$8,797.

(xxxi) Civil penalty for failure to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of \$880. Each day the violation continues is a separate violation.

(xxxii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(c)(1)(A), has a maximum of \$1,811.

(xxxiii) Civil penalty for failure to obey a cease and desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of \$9,054. Each day the violation continues is a separate violation.

(xxxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of \$880 and a maximum of \$8,797, or in the case of a violation that is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of \$17,593 and a maximum of \$175,931.

(xxxv) Civil penalty for failure to obey a cease and desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of \$9,054. Each day the violation continues is a separate violation.

(xxxvi) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(c), has a maximum of \$17,593.

(xxxvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(c)(1)(A)(i), has a minimum of \$830 and a maximum of \$8,295.

(xxxviii) Civil penalty for failure to obey a cease and desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of \$8,295. Each day the violation continues is a separate violation.

(xxxix) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of \$1,617.

(xl) Civil penalty for failure to obey a cease and desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of \$808. Each day the

violation continues is a separate violation.

(xli) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of \$1,527 and a maximum of \$15,270 for each violation.

(xlii) Civil penalty for failure to obey a cease and desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of \$1,527 and a maximum of \$15,270. Each day the violation continues is a separate violation.

(xliii) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1)(A)(i), has a maximum of \$1,527 for each violation.

(xliv) Civil penalty for failure to obey a cease and desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of \$7,635. Each day the violation continues is a separate violation.

(xlv) Civil penalty for violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of \$764 and a maximum of \$7,635 for each violation.

(xlvi) Civil penalty for failure to obey a cease and desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of \$764. Each day the violation continues is a separate violation.

(xlvii) Civil penalty for a violation of an order or regulation under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of \$1,527 for each violation.

(xlviii) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of \$8,797 for each violation.

(xlix) Civil penalty for violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of \$1,389 and a maximum of \$13,893 for each violation.

(l) Civil penalty for failure to obey a cease and desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of

\$13,893 for each offense. Each day the violation continues is a separate violation.

(li) Civil penalty for violation of certain provisions of the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(a)(1), has a maximum of \$14,372 for each violation.

(lii) Civil penalty for failure to obey a cease and desist order under the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(g)(3), has a maximum of \$14,372 for each violation. Each day the violation continues is a separate violation.

(liii) Civil penalty for failure to obey an order of the Secretary issued pursuant to the Dairy Product Mandatory Reporting program, codified at 7 U.S.C. 1637b(c)(4)(D)(iii), has a maximum of \$13,893 for each offense.

(liv) Civil penalty for a willful violation of the Country of Origin Labeling program by a retailer or person engaged in the business of supplying a covered commodity to a retailer, codified at 7 U.S.C. 1638b(b)(2), has a maximum of \$1,116 for each violation.

(lv) Civil penalty for violations of the Dairy Research Program, codified at 7 U.S.C. 4535 & 4510(b), has a maximum of \$2,393 for each violation.

(2) *Animal and Plant Health Inspection Service*—(i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of \$94 and a maximum of \$1,875.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$11,162, and knowing failure to obey a cease and desist order has a civil penalty of \$1,674.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspection by the Department, codified at 7 U.S.C. 2279e(a), has a maximum of \$13,893.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of \$27,500.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in the PPA, codified at 7 U.S.C. 7734(b)(1), has a maximum of the greater of: \$69,463 in the case of any individual (except that the civil penalty may not exceed \$1,389 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), \$347,313 in the case

of any other person for each violation, \$558,078 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,116,156 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in the PPA that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person (except as provided in 7 U.S.C. 8309(d)) that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a maximum of the greater of: \$66,666 in the case of any individual, except that the civil penalty may not exceed \$1,333 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, \$333,328 in the case of any other person for each violation, \$558,078 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,116,156 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of \$333,328 in the case of an individual and \$666,656 in the case of any other person.

(viii) Civil penalty for violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of \$5,500.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of \$10,750.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, any permit or certificate issued

thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d) (other than regulations relating to record keeping or filing reports), (f), or (g) of the Endangered Species Act of 1973 (16 U.S.C. 1538(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d), (f), and (g)), as set forth at 16 U.S.C. 1540(a), has a maximum of \$50,277.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation under the Endangered Species Act of 1973, as set forth at 16 U.S.C. 1540(a), has a maximum of \$24,133.

(xii) Civil penalty for violation, with respect to terrestrial plants, of the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as set forth at 16 U.S.C. 1540(a), has a maximum of \$1,801.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of \$162 and a maximum of \$808.

(xiv) Civil penalty for a violation of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. 1901 note, and its implementing regulations in 9 CFR part 88, as set forth in 9 CFR 88.6, has a maximum of \$5000. Each horse transported in violation of Part 88 is a separate violation.

(3) *Food and Nutrition Service*—(i) Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of \$111,616 for each violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C.

2021(b)(3)(B), has a maximum of \$39,574 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$71,262.

(iii) Civil penalty for the sale of firearms, ammunitions, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of \$40,221 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$72,428.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants

and Children and discloses the amount of the bid, rebate, or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of \$170,472,030.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$14,740 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$58,958.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosive, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$14,740 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$58,958.

(4) *Food Safety and Inspection Service*—(i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of \$8,797 for each violation.

(ii) [Reserved]

(5) *Forest Service*—(i) Civil penalty for willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of \$905,353 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of \$135,803 per violation.

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of \$90,535 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber

originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of \$905,353.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of \$19,787.

(6) *Grain Inspection, Packers and Stockyards Administration*—(i) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of \$27,500.

(ii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of \$1,875 and not more than \$94 for each day the violation continues.

(iii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of \$1,875 and not more than \$94 for each day the violation continues.

(iv) Civil penalty for a stockyard owner, livestock market agency, and dealer violation, codified at 7 U.S.C. 213(b), has a maximum of \$27,500.

(v) Civil penalty for a stockyard owner, livestock market agency, and dealer compliance order, codified at 7 U.S.C. 215(a), has a maximum of \$1,875.

(vi) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b–2(b), has a maximum of \$80,000.

(vii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of \$268,750.

(7) *Federal Crop Insurance Corporation*—(i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to any insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified at 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: The amount of the pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or \$11,744.

(ii) [Reserved]

(8) *Rural Housing Service*—(i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified at 42 U.S.C. 1490p(e)(2), has a maximum of \$192,459 in the case of an individual, and a maximum of \$1,924,589 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Housing Act

of 1949, codified at 42 U.S.C.

1490s(a)(2), has a maximum of \$34,731.

(iii) Civil penalty under section 543b of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights statutes and regulations, codified at 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: Twice the damages the Department, guaranteed lender, or project that is secured for a loan under Title V, suffered or would have suffered as a result of the violation; or \$69,463 per violation.

(9) *Farm Service Agency*—(i) Civil penalty for failure to comply with certain provisions of the U.S. Warehouse Act, codified at 7 U.S.C. 254, has a maximum of \$34,731 per violation if an agricultural product is not involved in the violation.

(ii) [Reserved]

(10) *Commodity Credit Corporation*—(i) Civil penalty for willful failure or refusal to furnish information, or willful furnishing of false information under of section 156 of the Federal Agricultural Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$15,270 for each violation.

(ii) Civil penalty for willful failure or refusal to furnish information or willful furnishing of false data by a processor, refiner, or importer of sugar, syrup and molasses under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$15,270 for each violation.

(iii) Civil penalty for filing a false acreage report that exceeds tolerance under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$15,270 for each violation.

(iv) Civil penalty for knowingly violating any regulation of the Secretary of the Commodity Credit Corporation pertaining to flexible marketing allotments for sugar under section 359h(b) of the Agricultural Adjustment Act of 1938, codified at 7 U.S.C. 1359hh(b), has a maximum of \$11,162 for each violation.

(v) Civil penalty for knowing violation of regulations promulgated by the Secretary pertaining to cotton insect eradication under section 104(d) of the Agricultural Act of 1949, codified at 7

U.S.C. 1444a(d), has a maximum of \$13,750 for each offense.

(11) *Office of the Secretary*—(i) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent claim as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(1), has a maximum of \$10,958.

(ii) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent written statement as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(2), has a maximum of \$10,958.

Dated: November 28, 2017.

Stephen L. Censky,
Deputy Secretary.

[FR Doc. 2017-26194 Filed 12-4-17; 8:45 am]

BILLING CODE 3410-90-P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1240

[EOIR Docket No. 180; AG Order No. 4034-2017]

RIN 1125-AA25

Procedures Further Implementing the Annual Limitation on Suspension of Deportation and Cancellation of Removal

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending the Executive Office for Immigration Review (“EOIR”) regulations governing the annual limitation on cancellation of removal and suspension of deportation decisions. The amendment eliminates certain procedures created in 1998 that were used to convert 8,000 conditional grants of suspension of deportation and cancellation of removal to outright grants before the end of fiscal year 1998. In addition, it authorizes immigration judges and the Board of Immigration Appeals (“Board”) to issue final decisions denying applications, without restriction, regardless of whether the annual limitation has been reached.

DATES: This rule is effective January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Jean King, General Counsel, Executive Office

for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305-0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

On November 30, 2016, the Department published in the **Federal Register** a rule proposing to amend EOIR’s regulations relating to the annual limitation on cancellation of removal and suspension of deportation. 81 FR 86291 (Nov. 30, 2016). The comment period ended on January 30, 2017. The Department received four comments. For the reasons set forth below, the proposed rule is adopted without change.

II. Background and Summary

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Public Law 104-208, Div. C, 110 Stat. 3009-546, added section 240A(e) to the Immigration and Nationality Act (“INA” or the “Act”), Public Law 82-414, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8, 18, and 22 U.S.C.), by establishing an annual limitation on the number of aliens who may be granted suspension of deportation or cancellation of removal followed by adjustment of status. The annual limitation is as follows:

[T]he Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 244(a) (as in effect before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), of a total of more than 4,000 aliens in any fiscal year.

INA sec. 240A(e)(1) (8 U.S.C. 1229b(e)(1)).

On October 3, 1997, the Department issued an interim rule, which authorized immigration judges and the Board to grant applications for suspension of deportation and cancellation of removal only on a “conditional basis.” 62 FR 51760, 51762 (Oct. 3, 1997). This interim rule was a temporary measure to give the Department time to decide how best to implement the annual statutory limitation. Pursuant to the rule, the Chief Immigration Judge instructed immigration judges to convert previously reserved grants of suspension and cancellation to conditional grants.

On November 19, 1997, Congress enacted the Nicaraguan Adjustment and Central American Relief Act (“NACARA”), Public Law 105-100, title II, 111 Stat. 2160, 2193-2201, which amended section 240A(e) of the Act.

NACARA reaffirmed the annual limitation of 4,000 grants but exempted from the limitation certain nationals of Guatemala, El Salvador, and the former Soviet bloc countries. *See* NACARA sec. 204, 111 Stat. at 2200-01. NACARA provided for an additional 4,000 suspension/cancellation grants to increase the annual limitation to a total of 8,000 for fiscal year 1998 only. *Id.*

On September 30, 1998, the Department issued the current interim rule, which eliminated the “conditional grant” process established in the October 1997 interim rule and provided new procedures for immigration judges and the Board to follow with respect to implementing the numerical limitation on suspension and cancellation of removal imposed by IIRIRA and NACARA, 63 FR 52134 (Sept. 30, 1998) (codified at 8 CFR 1240.21 (as in effect prior to publication of this rule)).

First, the interim rule created a process to address a discrete issue that required resolution before the end of fiscal year 1998: The interaction between the October 1997 interim rule authorizing immigration judges and the Board to grant applications for suspension and cancellation on a “conditional basis,” *see* 62 FR 51760, 51762 (Oct. 3, 1997), and the enactment of NACARA in November 1997, which added 4,000 grants to the statutory annual limitation, creating a total of 8,000 available grants for fiscal year 1998, *see* NACARA sec. 202, 111 Stat. at 2193-96. These procedures were set forth in 8 CFR 1240.21(b) (as in effect prior to publication of this rule). *See* 63 FR at 52138-39.

Second, the interim rule created a new procedure for processing applications for suspension and cancellation in order to avoid exceeding the annual limitation. *See* 63 FR at 52139-40 (codified at 8 CFR 1240.21(c) (as in effect prior to publication of this rule)). The rule eliminated the conditional grant process. *Id.* at 52138 (codified at 8 CFR 1240.21(a)(2)). Instead, under the interim rule, immigration judges and the Board issued grants of suspension or cancellation in chronological order until grants were no longer available in a fiscal year. The interim rule provided that when grants were no longer available in a fiscal year, “further decisions to grant or deny such relief shall be reserved” until grants become available in a future fiscal year. *Id.* at 52140 (codified at 8 CFR 1240.21(c)(1) (as in effect prior to publication of this rule)). With respect to denials, the interim rule stated that immigration judges and the Board “may deny without reserving decision or may