

because it is an organization described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), a qualified tuition program described in section 529, a qualified ABLE program described in section 529A, or a Coverdell education savings account described in section 530, the term revenue includes only revenue that is reflected in unrelated business taxable income as defined in section 512.

(iii) *Number of employees.* For purposes of this section, the number of employees on a full-time equivalent basis may be reported as of the end of the accounting period, on the basis of average employment levels for the annual accounting period, or on any other reasonable basis consistently applied across tax jurisdictions and from year to year. Independent contractors participating in the ordinary operating activities of a constituent entity may be reported as employees of such constituent entity. Reasonable rounding or approximation of the number of employees is permissible, provided that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

(iv) *Income tax paid and accrued tax expense of permanent establishment.* In the case of a constituent entity that is a permanent establishment, the amount of income tax paid and the amount of accrued tax expense referred to in paragraphs (d)(2)(iv) and (v) of this section should not include the income tax paid or tax expense accrued by the business entity of which the permanent establishment would be a part, but for the second sentence of paragraph (b)(2) of this section, in that business entity's tax jurisdiction of residence on the income derived by the permanent establishment.

(v) *Certain transportation income.* If a constituent entity of a U.S. MNE group derives income from international transportation or transportation in inland waterways that is covered by income tax convention provisions that are specific to such income and under which the taxing rights on such income are allocated exclusively to one tax jurisdiction, then the U.S. MNE group should report the information required under paragraph (d)(2) of this section with respect to such income for the tax jurisdiction to which the relevant

income tax convention provisions allocate these taxing rights.

(e) *Reporting of financial amounts—*
(1) *Reporting in U.S. dollars required.* All amounts furnished under paragraph (d)(2) of this section, other than paragraph (d)(2)(viii) of this section, must be expressed in U.S. dollars. If an exchange rate is used other than in accordance with U.S. generally accepted accounting principles for conversion to U.S. dollars, the exchange rate must be indicated.

(2) *Sources of financial amounts.* All amounts furnished under paragraph (d)(2) of this section, other than paragraph (d)(2)(viii) of this section, should be based on applicable financial statements, books and records maintained with respect to the constituent entity, regulatory financial statements, or records used for tax reporting or internal management control purposes for an annual period of each constituent entity ending with or within the period described in paragraph (c) of this section.

(f) *Time and manner for filing.* Returns on Form 8975 required under paragraph (a) of this section for a reporting period must be filed with the ultimate parent entity's income tax return for the taxable year, in or with which the reporting period ends, on or before the due date (including extensions) for filing that person's income tax return or as otherwise prescribed by Form 8975.

(g) *Maintenance of records.* The U.S. person filing Form 8975 as an ultimate parent entity of a U.S. MNE group must maintain records to support the information provided on Form 8975. However, the U.S. person is not required to create and maintain records that reconcile the amounts provided on Form 8975 with the tax returns of any tax jurisdiction or applicable financial statements.

(h) *Exceptions to furnishing information.* An ultimate parent entity of a U.S. MNE group is not required to report information under this section for the reporting period described in paragraph (c) of this section if the annual revenue of the U.S. MNE group for the immediately preceding reporting period was less than \$850,000,000.

(i) [Reserved]

(j) *U.S. territories and possessions of the United States.* A U.S. territory ultimate parent entity may designate a U.S. business entity that it controls (as defined in section 6038(e)) to file Form 8975 on the U.S. territory ultimate parent entity's behalf with respect to such U.S. territory ultimate parent entity and the business entities that would be required to consolidate their

accounts with such U.S. territory ultimate parent entity under U.S. generally accepted accounting principles, or would be so required if equity interests in the U.S. territory ultimate parent entity were publicly traded on a U.S. securities exchange.

(k) *Applicability dates.* The rules of this section apply to reporting periods of ultimate parent entities of U.S. MNE groups that begin on or after the first day of a taxable year of the ultimate parent entity that begins on or after June 30, 2016.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: June 20, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF JUSTICE

28 CFR Parts 20, 22, 36, 68, 71, 76, and 85

[Docket No. OAG 148; AG Order No. 3690-2016]

Civil Monetary Penalties Inflation Adjustment

AGENCY: Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: In accordance with the provisions of the Bipartisan Budget Act of 2015, the Department of Justice is adjusting for inflation civil monetary penalties assessed or enforced by components of the Department.

DATES: *Effective date:* This rule is effective August 1, 2016.

Public comments: Written comments must be postmarked and electronic comments must be submitted on or before August 29, 2016. Commenters should be aware that the electronic Federal Docket Management System (FDMS) will accept comments submitted prior to Midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. OAG 148" on all electronic and written correspondence. The Department encourages all comments be submitted electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at <http://www.regulations.gov>

www.regulations.gov for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to <http://www.regulations.gov> will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW., Washington, DC 20530, telephone (202) 514-8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter. You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. Personal identifying information and confidential business information identified as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

Background

A. Prior Statutory Provisions for Inflation Adjustments

The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. 2461 note (2014) ("Inflation Adjustment Act"), provided for the regular evaluation and adjustment for inflation of civil

monetary penalties to, among other things, ensure that they continue to maintain their deterrent effect and that penalty amounts due the Federal Government are properly accounted for and collected. Section 31001(s)(1) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104-134, also known as the Debt Collection Improvement Act of 1996 ("Improvement Act"), amended section 4 of the Inflation Adjustment Act to require the head of each agency to adjust periodically each civil monetary penalty provided by law within the jurisdiction of the Federal agency by regulation and to publish each such regulation in the **Federal Register**. Subsection (s)(1) also added a new section to the Inflation Adjustment Act providing that any increase in a civil monetary penalty made under the Act shall apply only to violations that occur after the date the increase takes effect. Subsection (s)(2) of the Improvement Act provided that the first adjustment of a civil monetary penalty made pursuant to the amendment in subsection (s)(1) may not exceed 10 percent of such penalty.

The amounts of the adjustments were determined according to a formula set forth in the Inflation Adjustment Act, which used applicable "rounders" (or increments) for calculations based on the amount of the current penalty along with the statutorily defined cost-of-living adjustment. See 28 CFR 85.2 (2015); Public Law 101-410, sec. 5. For example, the applicable "rounder" for a current \$15,000 civil penalty amount was \$5,000, which meant that there would be no inflation adjustment if the raw inflation adjustment calculation showed an increase of less than \$2,500, but the civil penalty amount would be increased by the full \$5,000 increment if the raw inflation adjustment was above the rounding threshold. See *id.*

B. Past Inflation Adjustment Rules

In compliance with the prior statutory requirements, the Department of Justice published a rule on February 12, 1999 (64 FR 7066-03) adjusting the immigration-related civil monetary penalties assessed or enforced by the Executive Office for Immigration Review's (EOIR) Office of the Chief Administrative Hearing Officer (OCAHO). On August 30, 1999 (64 FR 47099), the Department published a rule adjusting the other civil monetary penalties assessed or enforced by it.

On February 26, 2008 (73 FR 10130-01), the Department of Homeland Security (DHS) and the Department of Justice published a rule adjusting for inflation the immigration-related civil

monetary penalties assessed or enforced by those two Departments under sections 274A, 274B, and 274C of the Immigration and Nationality Act (INA).¹ On March 28, 2014 (79 FR 17434-01), the Department published a rule adjusting for inflation the civil monetary penalties assessed or enforced by the Civil Rights Division.

C. Revised Statutory Process for Implementing Annual Inflation Adjustments

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114-74 (Nov. 2, 2015), titled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 ("2015 Amendments"), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Inflation Adjustment Act and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

The 2015 Amendments set forth a different method of calculation for the initial adjustment following the 2015 Amendments than for subsequent adjustments. For the initial adjustment, the "cost-of-living adjustment," which sets the amount by which the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, would be increased, is defined as "the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of October, 2015 exceeds the Consumer Price Index for the month of October of the calendar year during which the amount of such civil monetary penalty was established or adjusted under a provision of law other than this Act." Public Law 114-74, sec. 701(b)(2)(B) (amending section 5(b) of the Inflation Adjustment Act). This adjustment is to be applied to "the amount of the civil monetary penalty as it was most recently established or adjusted under a provision of law other than this Act," and "shall not exceed 150 percent of the amount of that civil monetary penalty on the date of enactment of" the 2015 Amendments. *Id.* For adjustments other than the initial adjustment, the "cost-of-living adjustment" is defined as "the percentage (if any) for each civil monetary penalty by which—(A) the

¹ The former Immigration and Naturalization Service (INS) was part of the Department of Justice when the 1999 inflation adjustments rules for civil monetary penalties were adopted. However, Congress abolished the former INS effective March 1, 2003, and transferred its functions to DHS pursuant to the Homeland Security Act, Public Law 107-296 (Nov. 25, 2002). EOIR was a separate component at that time, and it remains within the Department of Justice under the authority of the Attorney General.

Consumer Price Index for the month of October preceding the date of the adjustment, exceeds (B) the Consumer Price Index 1 year before the month of October referred to in subparagraph (A).” *Id.*

In short, the 2015 Amendments tie the inflation adjustments for the initial adjustment to an index reflecting the cost of living increases between 2015 and the year in which each civil penalty was established or adjusted by a provision of law other than the Inflation Adjustment Act. For subsequent adjustments, however, the adjustment will be determined by the difference in the Consumer Price Index between the October preceding the new adjustment and the October the year before. In addition, instead of using the larger “rounders” under the old formula, the resulting new civil penalty amounts adjusted under the 2015 Amendments are rounded to the nearest \$1.

The 2015 Amendments removed the 10 percent cap on the first-time inflation adjustment for each penalty, and, as noted above, provided that the initial adjustment following the 2015 Amendments “shall not exceed 150 percent of the amount of that civil monetary penalty on the date of enactment of” the 2015 Amendments. *See* Public Law 114–74, sec. 701(c) (repealing section 31001(s)(2) of the Improvement Act); *id.* sec. 701(b)(2)(B) (amending section 5(b) of the Inflation Adjustment Act). Effectively, this means that the adjusted civil penalty under this rule—which sets forth the initial

inflation adjustment following the 2015 Amendments—cannot be more than 2.5 times the amount of the current penalty, including prior inflation adjustments under the Inflation Adjustment Act. As shown in Table A of this preamble indicating the calculation of inflation adjustments, this statutory cap affects only six of the civil penalties being adjusted under this rule, because of prior inflation adjustments implemented since 1999. Although the statute authorizes the Department, with the concurrence of the Director of the Office of Management and Budget, to make a determination in certain circumstances to increase a civil penalty by less than the otherwise required amount, the Department is not invoking that authority in this rule. *See* Public Law 114–74, sec. 701(b)(1)(D) (adding section 4(c) to Inflation Adjustment Act).

The 2015 Amendments also amended section 6 of the Inflation Adjustment Act to provide that “[a]ny increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.”

Adjustments Made in This Rule for Civil Monetary Penalties

In accordance with the 2015 Amendments, the adjustments made by this rule are based on the Bureau of Labor Statistics’ Consumer Price Index for October 2015. The inflation factors used in Table A were provided to all

federal agencies in the OMB Memorandum for the Heads of Executive Departments and Agencies M–16–06 (Feb. 24, 2016). <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf> (last visited June 3, 2016).

Table A provides the calculations upon which the current inflation adjustments are being made. As summarized above, the key factors for these calculations are (1) the year in which each civil penalty amount was established or adjusted under a provision of law other than the Inflation Adjustment Act; (2) the amount of each civil penalty as so established or adjusted; (3) the inflationary adjustment factor (as determined according to the chart prepared by OMB) for the year of the most recent establishment or adjustment of the amount of the penalty; and (4) the resulting amount of the new adjusted civil penalty. For example, for a civil penalty that was most recently established by law at the amount of \$1,000 in the year 1996, applying the inflationary adjustment factor of 1.50245 for that year, the adjusted penalty as determined under this rule is \$1,502, as rounded to the nearest \$1. The only departures from this straightforward calculation are for those civil penalties whose amount was set decades ago and not previously adjusted; in those few cases, the civil penalty amount is capped at 2.5 times the civil penalty amount currently in effect, as noted by the footnotes in Table A.

TABLE A

U.S.C. Citation	Name/Description	CFR Citation	Year enacted	Last year adjusted (Non IAA)	Penalty (Non IAA) (\$)	Multiplier	DOJ Penalty as of 11/2/15 (\$) ¹	New DOJ penalty ²
ATF								
18 U.S.C. 922(t)(5)	Brady Law—Nat'l Instant Criminal Check System; Transfer of firearm without checking NICS.		1993	1993	5,000	1.63238	5,000	8,162
18 U.S.C. 924(p)	Child Safety Lock Act; Secure gun storage or safety device, violation.		2005	2005	2,500	1.19397	2,500	2,985
Civil Division								
12 U.S.C. 1833a(b)(1)	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation.	28 CFR 85.3(a)(6)	1989	1989	1,000,000	1.89361	1,100,000	1,893,610
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing) (per day)	28 CFR 85.3(a)(7)	1989	1989	1,000,000	1.89361	1,100,000	1,893,610
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing)	28 CFR 85.3(a)(7)	1989	1989	5,000,000	1.89361	5,500,000	9,468,050
22 U.S.C. 2399b(a)(3)(A)	Foreign Assistance Act; Fraudulent Claim for Assistance (per act).	28 CFR 85.3(a)(8)	1968	1968	2,000	6.73762	2,200	5,500**
31 U.S.C. 3729(a)	False Claims Act; ³ Violations	28 CFR 85.3(a)(9)	1986	1986	Min. 5,000 Max. 10,000	2.15628	Min. 5,500 Max. 11,000	Min. 10,781 Max. 21,563
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim).	28 CFR 71.3(a)	1986	1986	5,000	2.15628	5,500	10,781
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement).	28 CFR 71.3(f)	1986	1986	5,000	2.15628	5,500	10,781
40 U.S.C. 123(a)(1)(A)	Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act).	28 CFR 85.3(a)(12)	1949	1949	2,000	10.03536	2,200	5,500**
41 U.S.C. 8706(a)(1)(B)	Anti-Kickback Act; Violation Involving Kickbacks ⁴ (per occurrence).	28 CFR 85.3(a)(13)	1986	1986	10,000	2.15628	11,000	21,563
18 U.S.C. 2723(b)	Driver's Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records—Substantial Non-compliance (per day).		1994	1994	5,000	1.59089	5,000	7,954
18 U.S.C. 216(b)	Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes ⁵ (per violation).	28 CFR 85.3(c)	1989	1989	50,000	1.89361	55,000	94,681
41 U.S.C. 2105(b)(1)	Office of Federal Procurement Policy Act; ⁶ Violation by an individual (per violation).		1988	1988	50,000	1.97869	50,000	98,935
41 U.S.C. 2105(b)(2)	Office of Federal Procurement Policy Act; ⁶ Violation by an organization (per violation).		1988	1988	500,000	1.97869	500,000	989,345
42 U.S.C. 5157(d)	Disaster Relief Act of 1974; ⁷ Violation (per violation).		1974	1974	5,000	4.65436	5,000	12,500**

Civil Rights Division (excluding immigration-related penalties)

18 U.S.C. 248(c)(2)(B)(i)	Freedom of Access to Clinic Entrances Act of 1994 ("FACE Act"); Nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(1)(i) ...	1994	1994	10,000	1.59089	16,000	15,909
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(1)(ii) ...	1994	1994	15,000	1.59089	16,500	23,863
18 U.S.C. 248(c)(2)(B)(i)	FACE Act; Violation other than a non-violent physical obstruction, first violation.	28 CFR 85.3(b)(2)(i) ...	1994	1994	15,000	1.59089	16,500	23,863
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Violation other than a non-violent physical obstruction, subsequent violation.	28 CFR 85.3(b)(2)(ii) ...	1994	1994	25,000	1.59089	37,500	39,772
42 U.S.C. 3614(d)(1)(C)(i)	Fair Housing Act of 1968; first violation	28 CFR 85.3(b)(3)(i) ...	1988	1988	50,000	1.97869	75,000	98,935
42 U.S.C. 3614(d)(1)(C)(ii)	Fair Housing Act of 1968; subsequent violation.	28 CFR 85.3(b)(3)(ii) ...	1988	1988	100,000	1.97869	150,000	197,869
42 U.S.C. 12188(b)(2)(C)(i)	Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation.	28 CFR 36.504(a)(3)(i)	1990	1990	50,000	1.78156	75,000	89,078
42 U.S.C. 12188(b)(2)(C)(ii)	Americans With Disabilities Act; Public accommodations for individuals with disabilities, subsequent violation.	28 CFR 36.504(a)(3)(ii)	1990	1990	100,000	1.78156	150,000	178,156
50 U.S.C. App. 597(b)(3)	Service members Civil Relief Act of 2003; first violation.	28 CFR 85.3(b)(4)(i) ...	2010	2010	55,000	1.08745	60,000	59,810
50 U.S.C. App. 597(b)(3)	Service members Civil Relief Act of 2003; subsequent violation.	28 CFR 85.3(b)(4)(ii) ...	2010	2010	110,000	1.08745	120,000	119,620

Criminal Division

18 U.S.C. 983(h)(1)	Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim.	.....	2000	2000	Min. 250	1.36689	Min. 250	Min. 342
18 U.S.C. 1956(b)	Money Laundering Control Act of 1986; Violation ⁶.	.....	1986	1986	Max. 5,000 ..	2.15628	Max. 5,000 ..	Max. 6,834

DEA

21 U.S.C. 844a(a)	Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation).	28 CFR 76.3(a)	1988	1988	10,000	1.97869	11,000	19,787
21 U.S.C. 961(1)	Controlled Substance Import Export Act; Drug abuse, import or export.	28 CFR 85.3(d)	1970	1970	25,000	6.03650	27,500	68,750 **
21 U.S.C. 842(c)(1)(A)	Controlled Substances Act ("CSA"); Violations of 842(a)—other than (5), (10) and (16)—Prohibited acts re: controlled substances (per violation).	.....	1970	1970	25,000	6.03650	25,000	62,500 **
21 U.S.C. 842(c)(1)(B)	CSA; Violations of 842(a)(5) and (10)—Prohibited acts re: controlled substances.	.....	1998	1998	10,000	1.45023	10,000	14,502
21 U.S.C. 842(c)(1)(C)	CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor—False labeling of anabolic steroids (per violation).	.....	2014	2014	500,000	1.00171	500,000	500,855
21 U.S.C. 842(c)(1)(D)	CSA; Violation of 825(e) at the retail level—False labeling of anabolic steroids (per violation).	.....	2014	2014	1,000	1.00171	1,000	1,002

TABLE A—Continued

U.S.C. Citation	Name/Description	CFR Citation	Year enacted	Last year adjusted (Non IAA)	Penalty (Non IAA) (\$)	Multiplier	DOJ Penalty as of 11/2/15 (\$) ¹	New DOJ penalty ²
21 U.S.C. 842(c)(2)(C)	CSA; Violation of 842(a)(11) by a business—Distribution of laboratory supply with reckless disregard. ⁹	.....	1996	1996	250,000	1.50245	250,000	375,613
21 U.S.C. 856(d)	Illicit Drug Anti-Proliferation Act of 2003; Maintaining drug-involved premises. ¹⁰	.....	2003	2003	250,000	1.28561	250,000	321,403
Immigration-Related Penalties								
8 U.S.C. 1324a(e)(4)(A)(i)	Immigration Reform and Control Act of 1986 (“IRCA”); Unlawful employment of aliens, first order (per unauthorized alien).	28 CFR 68.52(c)(1)(i) ..	1986	1986	Min. 250	2.15628	Min. 375	Min. 539 Max. 4,313
8 U.S.C. 1324a(e)(4)(A)(ii)	IRCA; Unlawful employment of aliens, second order (per such alien).	28 CFR 68.52(c)(1)(ii)	1986	1986	Min. 2,000 ...	2.15628	Min. 3,200 ...	Min. 4,313 Max. 10,781
8 U.S.C. 1324a(e)(4)(A)(iii)	IRCA; Unlawful employment of aliens, subsequent order (per such alien).	28 CFR 68.52(c)(1)(iii)	1986	1986	Min. 3,000 ...	2.15628	Min. 4,300 ...	Min. 6,469 Max. 21,563
8 U.S.C. 1324a(e)(5)	IRCA; Paperwork violation (per relevant individual).	28 CFR 68.52(c)(5)	1986	1986	Min. 100	2.15628	Min. 110	Min. 216 Max. 2,156
8 U.S.C. 1324a (note)	IRCA; Violation relating to participating employer's failure to notify of final nonconfirmation of employee's employment eligibility (per relevant individual).	28 CFR 68.52(c)(6)	1996	1996	Min. 500	1.50245	Min. 550	Min. 751 Max. 1,502
8 U.S.C. 1324a(g)(2)	IRCA; Violation/prohibition of indemnity bonds (per violation).	28 CFR 68.52(c)(7)	1986	1986	1,000	2.15628	1,100	2,156
8 U.S.C. 1324b(g)(2)(B)(iv)(I)	IRCA; Unfair immigration-related employment practices, first order (per individual discriminated against).	28 CFR 68.52(d)(1)(viii).	1990	1990	Min. 250	1.78156	Min. 375	Min. 445 Max. 3,563
8 U.S.C. 1324b(g)(2)(B)(iv)(II)	IRCA; Unfair immigration-related employment practices, second order (per individual discriminated against).	28 CFR 68.52(d)(1)(ix)	1990	1990	Min. 2,000 ...	1.78156	Min. 3,200 ...	Min. 3,563 Max. 8,908
8 U.S.C. 1324b(g)(2)(B)(iv)(III)	IRCA; Unfair immigration-related employment practices, subsequent order (per individual discriminated against).	28 CFR 68.52(d)(1)(x)	1990	1990	Min. 3,000 ...	1.78156	Min. 4,300 ...	Min. 5,345 Max. 17,816
8 U.S.C. 1324b(g)(2)(B)(iv)(IV)	IRCA; Unfair immigration-related employment practices, document abuse (per individual discriminated against).	28 CFR 68.52(d)(1)(xii)	1990	1990	Min. 100	1.78156	Min. 110	Min. 178 Max. 1,782
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(1)–(4).	28 CFR 68.52(e)(1)(i) ..	1990	1990	Min. 250	1.78156	Min. 375	Min. 445 Max. 3,563
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(iii)	1990	1990	Min. 2,000 ...	1.78156	Min. 3,200 ...	Min. 3,563 Max. 8,908
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(ii)	1996	1996	Min. 250	1.50245	Min. 275	Min. 376 Max. 3,005
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(iv)	1996	1996	Min. 2,000 ...	1.50245	Min. 2,200 ...	Min. 3,005 Max. 7,512

FBI

49 U.S.C. 30505(a)	National Motor Vehicle Title Identification System; Violation (per violation).	1994	1994	1,000	1,59089	1,000	1,591
Office of Justice Programs							
42 U.S.C. 3789g(d)	Confidentiality of information; State and Local Criminal History Record Information Systems—Right to Privacy Violation.	1979	1979	10,000	3.16274	11,000	27,500**

** Adjusted penalty capped at 2.5 times the penalty amount in effect on November 2, 2015, the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, sec. 701 (“2015 Amendments”). See *id.* § 701(b)(2) (amending section 5(b)(2)(C) of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) to provide that the amount of the first inflation adjustment after the date of enactment of the 2015 Amendments “shall not exceed 150 percent of the amount of that civil monetary penalty on the date of enactment of the [2015 Amendments].”).

¹ The figures set forth in this column represent the penalty as last adjusted by Department of Justice regulation or statute as of November 2, 2015.

² All figures set forth in this table are maximum penalties, unless otherwise indicated.

³ Section 3729(a)(1) of Title 31 states that any person who violates this section “is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person.” 31 U.S.C. 3729(a)(1) (2012) (citation omitted). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to “not less than 2 times the amount of damages which the Government sustains because of the act of that person.” *Id.* § 3729(a)(2). The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

⁴ Section 8706(a)(1) of Title 41 states that “[t]he Federal Government in a civil action may recover from a person—(1) that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty equal to—(A) twice the amount of each kickback involved in the violation; and (B) not more than \$10,000 for each occurrence of prohibited conduct” 41 U.S.C. 8706(a)(1) (2012). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

⁵ Section 216(b) of Title 18 states the civil penalty should be no “more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater.” 18 U.S.C. 216(b) (2012). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under § 216(b).

⁶ Section 2105(b) of Title 41 states, “(b) Civil penalties.—The Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of this title. On proof of that conduct by a preponderance of the evidence—(1) an individual is liable to the Federal Government for a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct; and (2) an organization is liable to the Federal Government for a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct.” 41 U.S.C. 2105(b) (2012). The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

⁷ The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b) (2012). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d) (2015). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8 (2015).

⁸ Section 1956(b)(1) of Title 18 states that “[w]hoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—(A) the value of the property, funds, or monetary instruments involved in the transaction; or (B) \$10,000.” 18 U.S.C. 1956(b)(1) (2012). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

⁹ Section 842(c)(2)(C) of Title 21 states that “[i]n addition to the penalties set forth elsewhere in this subchapter or subchapter II of this chapter, any business that violates paragraph (1) of subsection (a) of this section shall, with respect to the first such violation, be subject to a civil penalty of not more than \$250,000, but shall not be subject to criminal penalties under this section, and shall, for any succeeding violation, be subject to a civil fine of not more than \$250,000 or double the last previously imposed penalty, whichever is greater.” 21 U.S.C. 842(c)(2)(C) (2012). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

¹⁰ Section 856(d)(1) of Title 21 states that “(1) Any person who violates subsection (a) of this section shall be subject to a civil penalty of not more than the greater of—(A) \$250,000; or (B) 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person.” 21 U.S.C. 856(d)(1) (2012). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

Currently, 28 CFR 85.3 provides for inflation adjustments of a number of civil penalties enforced by the Department, pursuant to the former inflation adjustment statutory provisions. This rule revises § 85.3 to provide that the inflation adjustments set forth in that section will continue to apply to violations occurring on or before November 2, 2015, the date of enactment of the 2015 Amendments, as well as to assessments made before August 1, 2016, whose associated violations occurred after November 2, 2015. Other existing Department regulations provide for inflation adjustments of other civil penalties under prior law, such as the civil penalties under certain provisions of the immigration laws in 28 CFR 68.52. Those other existing regulations are also being revised to provide that the existing regulatory inflation adjustments will continue to apply to violations occurring on or before November 2, 2015, as well as to assessments made before August 1, 2016, whose associated violations occurred after November 2, 2015.

A new regulatory provision, § 85.5, includes a comprehensive table setting forth the penalty amounts for civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015. The table in § 85.5 is the same as Table A in this preamble, except that it only includes the first three descriptive columns for each civil penalty provision, and the last two columns setting forth the penalty amounts in effect on November 2, 2015 (the date of enactment of the 2015 Amendments) and the new adjusted civil penalty amounts taking effect for civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015. (The other columns in Table A, which show how the adjusted civil penalty amounts are calculated, are provided for informational purposes in this preamble, but are not being codified in the Code of Federal Regulations.) Those instances where the civil penalty amount for the initial adjustment is capped at 2.5 times the civil penalty amount currently in effect, as provided in the 2015 Amendments, are noted by footnote in the table in § 85.5.²

²In rare instances, the adjusted civil penalty amount under this rule is less than the penalty amount currently in effect, because, in these cases, the use of rounders under the former law increased a particular penalty by an increment exceeding the actual rate of inflation. For example, in 2014, the Department published a rule increasing the \$55,000 civil penalty for a first violation of the Servicemembers Civil Relief Act, 50 U.S.C. 4041(b)(3), by an increment of \$5,000 to \$60,000. 79 FR 17434–01 (Mar. 28, 2014). Under this rule,

This rule adjusts for inflation civil monetary penalties within the jurisdiction of the Justice Department for purposes of the Inflation Adjustment Act, as amended. Other agencies are responsible for the inflation adjustments of certain other civil monetary penalties that the Department's litigating components bring suit to collect. The reader should consult the regulations of those other agencies for inflation adjustments to those penalties.

Effective Date of Adjusted Civil Penalty Amounts

In this rule, the adjusted civil penalty amounts are applicable only to civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the date of enactment of the 2015 Amendments. Therefore, violations occurring on or before November 2, 2015, and assessments made prior to August 1, 2016, whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts set forth in the Department's existing regulations in 28 CFR parts 20, 22, 36, 68, 71, 76 and 85 (or as set forth by statute if the amount has not yet been adjusted by regulation).

Statutory and Regulatory Analyses

Administrative Procedure Act, 5 U.S.C. 553

The Attorney General is publishing this rule as an interim final rule, without prior notice and comment, as authorized by the 2015 Amendments. The Department is providing a 60-day period for public comment after publication of this rule and welcomes public comment on the changes made to reflect the revised process for calculating inflation adjustments under the Inflation Adjustment Act, as amended by the 2015 Amendments.

Regulatory Flexibility Act

Only those entities that are determined to have violated Federal law and regulations would be affected by the increase in the civil penalty amounts made by this rule. A Regulatory Flexibility Act analysis is not required for this rule because publication of a notice of proposed rulemaking is not required. See 5 U.S.C. 603(a).

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive

taking account of the actual rate of inflation since enactment, the civil penalty amount is adjusted slightly lower to \$59,810.

Order 12866, "Regulatory Planning and Review" section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review" section 1, General Principles of Regulation.

The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Both Executive Orders 12866 and 13563 direct agencies, in certain circumstances, to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). As stated above, the statute authorizes the Department, with the concurrence of the Director of the Office of Management and Budget, to make a determination in certain circumstances to increase a civil penalty by less than the otherwise required amount. However, the Department is not invoking that authority in this rule. The adjustments to existing civil monetary penalties set forth in this rule are calculated pursuant to the statutory formula.

Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions

of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects

28 CFR Part 20

Classified information, Crime, Intergovernmental relations, Investigations, Law Enforcement, Penalties, Privacy, Research, and Statistics.

28 CFR Part 22

Crime, Juvenile delinquency, Penalties, Privacy, Research, and Statistics.

28 CFR Part 36

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Handicapped, Historic preservation, Individuals with disabilities, Penalties, Reporting and recordkeeping requirements.

28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-discrimination.

28 CFR Part 71

Administrative practice and procedure, Claims, Fraud, Organization and function (Government agencies), Penalties.

28 CFR Part 76

Administrative practice and procedure, Drug abuse, Drug traffic control, Penalties.

28 CFR Part 85

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of Title 28 of

the Code of Federal Regulations is amended as follows:

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

- 1. The authority citation for part 20 continues to read as follows:

Authority: 28 U.S.C. 534; Pub. L. 92–544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*; Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

- 2. In § 20.25, add after the first sentence a new sentence to read as follows:

§ 20.25 Penalties.

* * * For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, see the civil penalty amount as provided in 28 CFR 85.5. * * *

PART 22—CONFIDENTIALITY OF IDENTIFIABLE RESEARCH AND STATISTICAL INFORMATION

- 3. The authority citation for part 22 continues to read as follows:

Authority: Secs. 801(a), 812(a), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473); secs. 262(b), 262(d), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended (Pub. L. 93–415, as amended by Pub. L. 94–503, Pub. L. 95–115, Pub. L. 99–509, and Pub. L. 98–473); and secs. 1407(a) and 1407(d) of the Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.*, Pub. L. 98–473; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

- 4. In § 22.29 add a new sentence at the end to read as follows:

§ 22.29 Sanctions.

* * * For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, see the civil penalty amount as provided in 28 CFR 85.5.

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

- 5. The authority citation for part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12188(b); Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

- 6. In § 36.504, revise paragraphs (a)(3)(i) and (a)(3)(ii), to read as follows:

§ 36.504 Relief.

(a) * * *

(3) * * *

(i) Not exceeding \$50,000 for a first violation occurring before September 29, 1999, and not exceeding \$55,000 for a first violation occurring on or after September 29, 1999, and before April 28, 2014, and not exceeding \$75,000 for a first violation occurring on or after April 28, 2014, except that, for civil penalties assessed after August 1, 2016, for a first violation occurring after November 2, 2015, the civil penalty shall not exceed the applicable amount set forth in 28 CFR 85.5.

(ii) Not exceeding \$100,000 for any subsequent violation occurring before September 29, 1999, and not exceeding \$110,000 for any subsequent violation occurring on or after September 29, 1999, and before April 28, 2014, and not exceeding \$150,000 for any subsequent violation occurring on or after April 28, 2014, except that, for civil penalties assessed after August 1, 2016, for any subsequent violation occurring after November 2, 2015, the civil penalty shall not exceed the applicable amount set forth in 28 CFR 85.5.

* * * * *

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS, UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES, AND DOCUMENT FRAUD

- 7. The authority citation for part 68 continues to read as follows:

Authority: 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c.

- 8. In § 68.52, revise paragraphs (c)(8), (d)(2), and (e)(3), to read as follows:

§ 68.52 Final order of the Administrative Law Judge.

* * * * *

(c) * * *

(8) *Civil penalties assessed after August 1, 2016.* For civil penalties assessed after August 1, 2016, whose associated violations described in paragraph (c) of this section occurred after November 2, 2015, the applicable civil penalty amounts are set forth in 28 CFR 85.5.

* * * * *

(d) * * *

(2) *Civil penalties assessed after August 1, 2016.* For civil penalties assessed after August 1, 2016, whose associated violations described in paragraph (d) of this section occurred

after November 2, 2015, the applicable civil penalty amounts are set forth in 28 CFR 85.5.

* * * * *

(e) * * *

(3) *Civil penalties assessed after August 1, 2016.* For civil penalties assessed after August 1, 2016, whose associated violations described in paragraph (e) of this section occurred after November 2, 2015, the applicable civil penalty amounts are set forth in 28 CFR 85.5.

* * * * *

PART 71—IMPLEMENTATION OF THE PROVISIONS OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 9. The authority citation for part 71 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

■ 10. In § 71.3, paragraph (a) introductory text and paragraph (f) introductory text are revised, to read as follows:

§ 71.3 Basis for civil penalties and assessments.

(a) Any person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each claim listed in paragraphs (a)(1) through (a)(4) of this section made before September 29, 1999, and not more than \$5,500 for each such claim made on or after September 29, 1999, and not more than the applicable amount as provided in 28 CFR 85.5 for civil penalties assessed after August 1, 2016, for each such claim made after November 2, 2015, if that person makes a claim that the person knows or has reason to know:

* * * * *

(f) Any person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each statement listed in paragraphs (f)(1) and (f)(2) of this section made before September 29, 1999, and not more than \$5,500 for each such statement made on or after September 29, 1999, and not more than the applicable amount as provided in 28 CFR 85.5 for civil

penalties assessed after August 1, 2016 for each such statement made after November 2, 2015, if that person makes a written statement that:

* * * * *

PART 76—RULES OF PROCEDURE FOR ASSESSMENT OF CIVIL PENALTIES FOR POSSESSION OF CERTAIN CONTROLLED SUBSTANCES

■ 11. The authority citation for part 76 continues to read as follows:

Authority: 5 U.S.C. 301; 21 U.S.C. 844a, 875, 876; 28 U.S.C. 509, 510; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

■ 12. In § 76.3 add a new sentence at the end of paragraph (a) to read as follows:

§ 76.3 Basis for civil penalty.

(a) * * * For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, see the civil penalty amount as provided in 28 CFR 85.5.

* * * * *

PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT

■ 13. The authority citation for part 85 is revised to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321; Pub. L. 114–74, section 701, 28 U.S.C. 2461 note.

■ 14. Revise § 85.1 to read as follows:

§ 85.1 In general.

(a) For violations occurring on or before November 2, 2015, and for civil penalties assessed before August 1, 2016, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department of Justice and listed in section 85.3 are adjusted as set forth in that section, in accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 104–410, 104 Stat. 890, in effect prior to November 2, 2015.

(b) For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the civil monetary penalties

provided by law within the jurisdiction of the Department of Justice are adjusted as set forth in section 85.5, in accordance with the requirements of the Bipartisan Budget Act of 2015, Public Law 114–74, section 701 (Nov. 2, 2015), 28 U.S.C. 2461 note.

§ 85.2 [Removed and reserved]

■ 15. Remove and reserve § 85.2.

■ 16. In § 85.3, revise the heading and the introductory text to read as follows:

§ 85.3 Adjustments to penalties for violations occurring on or before November 2, 2015.

For all violations occurring on or before November 2, 2015, and for assessments made before August 1, 2016, for violations occurring after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the respective components of the Department, as set forth in paragraphs (a) through (d) of this section, are adjusted as provided in this section in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, as in effect prior to November 2, 2015. The adjusted penalties set forth in paragraphs (a), (c), and (d) of this section are effective for violations occurring on or after September 29, 1999, and on or before November 2, 2015, and for assessments made before August 1, 2016, for violations occurring after November 2, 2015. For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, see the adjusted penalty amounts in section 85.5.

* * * * *

■ 17. Add § 85.5 to read as follows:

§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.

For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the following table.

U.S.C. Citation	Name/Description	CFR Citation	DOJ Penalty as of 11/2/15 (\$)¹	New DOJ penalty²
ATF				
18 U.S.C. 922(t)(5)	Brady Law—Nat'l Instant Criminal Check System; Transfer of firearm without checking NICS.	.....	5,000	8,162

U.S.C. Citation	Name/Description	CFR Citation	DOJ Penalty as of 11/2/15 (\$) ¹	New DOJ penalty ²
18 U.S.C. 924(p)	Child Safety Lock Act; Secure gun storage or safety device, violation.		2,500	2,985
Civil Division				
12 U.S.C. 1833a(b)(1)	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation.	28 CFR 85.3(a)(6)	1,100,000	1,893,610
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing) (per day)	28 CFR 85.3(a)(7)	1,100,000	1,893,610
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing)	28 CFR 85.3(a)(7)	5,500,000	9,468,050
22 U.S.C. 2399b(a)(3)(A)	Foreign Assistance Act; Fraudulent Claim for Assistance (per act).	28 CFR 85.3(a)(8)	2,200	5,500 **
31 U.S.C. 3729(a)	False Claims Act; ³ Violations	28 CFR 85.3(a)(9)	Min. 5,500 Max. 11,000	Min. 10,781 Max. 21,563
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim).	28 CFR 71.3(a)	5,500	10,781
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement).	28 CFR 71.3(f)	5,500	10,781
40 U.S.C. 123(a)(1)(A)	Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act).	28 CFR 85.3(a)(12)	2,200	5,500 **
41 U.S.C. 8706(a)(1)(B)	Anti-Kickback Act; Violation Involving Kickbacks ⁴ (per occurrence).	28 CFR 85.3(a)(13)	11,000	21,563
18 U.S.C. 2723(b)	Driver's Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records—Substantial Non-compliance (per day).		5,000	7,954
18 U.S.C. 216(b)	Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes ⁵ (per violation).	28 CFR 85.3(c)	55,000	94,681
41 U.S.C. 2105(b)(1)	Office of Federal Procurement Policy Act; ⁶ Violation by an individual (per violation).		50,000	98,935
41 U.S.C. 2105(b)(2)	Office of Federal Procurement Policy Act; ⁶ Violation by an organization (per violation).		500,000	989,345
42 U.S.C. 5157(d)	Disaster Relief Act of 1974; ⁷ Violation (per violation)		5,000	12,500 **
Civil Rights Division (excluding immigration-related penalties)				
18 U.S.C. 248(c)(2)(B)(i)	Freedom of Access to Clinic Entrances Act of 1994 ("FACE Act"); Nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(1)(i)	16,000	15,909
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(1)(ii)	16,500	23,863
18 U.S.C. 248(c)(2)(B)(i)	FACE Act; Violation other than a nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(2)(i)	16,500	23,863
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Violation other than a nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(2)(ii)	37,500	39,772
42 U.S.C. 3614(d)(1)(C)(i)	Fair Housing Act of 1968; first violation	28 CFR 85.3(b)(3)(i)	75,000	98,935
42 U.S.C. 3614(d)(1)(C)(ii)	Fair Housing Act of 1968; subsequent violation	28 CFR 85.3(b)(3)(ii)	150,000	197,869
42 U.S.C. 12188(b)(2)(C)(i)	Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation.	28 CFR 36.504(a)(3)(i)	75,000	89,078
42 U.S.C. 12188(b)(2)(C)(ii)	Americans With Disabilities Act; Public accommodations for individuals with disabilities, subsequent violation.	28 CFR 36.504(a)(3)(ii)	150,000	178,156
50 U.S.C. App. 597(b)(3)	Servicemembers Civil Relief Act of 2003; first violation.	28 CFR 85.3(b)(4)(i)	60,000	59,810
50 U.S.C. App. 597(b)(3)	Servicemembers Civil Relief Act of 2003; subsequent violation.	28 CFR 85.3(b)(4)(ii)	120,000	119,620
Criminal Division				
18 U.S.C. 983(h)(1)	Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim.		Min. 250 Max. 5,000	Min. 342 Max. 6,834
18 U.S.C. 1956(b)	Money Laundering Control Act of 1986; Violation ⁸		10,000	21,563
DEA				
21 U.S.C. 844a(a)	Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation).	28 CFR 76.3(a)	11,000	19,787
21 U.S.C. 961(1)	Controlled Substance Import Export Act; Drug abuse, import or export.	28 CFR 85.3(d)	27,500	68,750 **

U.S.C. Citation	Name/Description	CFR Citation	DOJ Penalty as of 11/2/15 (\$) ¹	New DOJ penalty ²
21 U.S.C. 842(c)(1)(A)	Controlled Substances Act (“CSA”); Violations of 842(a)—other than (5), (10) and (16)—Prohibited acts re: controlled substances (per violation).	.....	25,000	62,500 **
21 U.S.C. 842(c)(1)(B)	CSA; Violations of 842(a)(5) and (10)—Prohibited acts re: controlled substances.	.....	10,000	14,502
21 U.S.C. 842(c)(1)(C)	CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor—False labeling of anabolic steroids (per violation).	.....	500,000	500,855
21 U.S.C. 842(c)(1)(D)	CSA; Violation of 825(e) at the retail level—False labeling of anabolic steroids (per violation).	.....	1,000	1,002
21 U.S.C. 842(c)(2)(C)	CSA; Violation of 842(a)(11) by a business—Distribution of laboratory supply with reckless disregard ⁹.	.....	250,000	375,613
21 U.S.C. 856(d)	Illicit Drug Anti-Proliferation Act of 2003; Maintaining drug-involved premises ¹⁰.	.....	250,000	321,403

Immigration-Related Penalties

8 U.S.C. 1324a(e)(4)(A)(i)	Immigration Reform and Control Act of 1986 (“IRCA”); Unlawful employment of aliens, first order (per unauthorized alien).	28 CFR 68.52(c)(1)(i)	Min. 375	Min. 539
8 U.S.C. 1324a(e)(4)(A)(ii)	IRCA; Unlawful employment of aliens, second order (per such alien).	28 CFR 68.52(c)(1)(ii)	Max 3,200	Max. 4,313
8 U.S.C. 1324a(e)(4)(A)(iii)	IRCA; Unlawful employment of aliens, subsequent order (per such alien).	28 CFR 68.52(c)(1)(iii)	Min. 3,200	Min. 4,313
8 U.S.C. 1324a(e)(5)	IRCA; Paperwork violation (per relevant individual) ..	28 CFR 68.52(c)(5)	Max. 6,500	Max. 10,781
8 U.S.C. 1324a (note)	IRCA; Violation relating to participating employer’s failure to notify of final nonconfirmation of employee’s employment eligibility (per relevant individual).	28 CFR 68.52(c)(6)	Min. 4,300	Min. 6,469
8 U.S.C. 1324a(g)(2)	IRCA; Violation/prohibition of indemnity bonds (per violation).	28 CFR 68.52(c)(7)	Max. 16,000	Max. 21,563
8 U.S.C. 1324b(g)(2)(B)(iv)(I).	IRCA; Unfair immigration-related employment practices, first order (per individual discriminated against).	28 CFR 68.52(d)(1)(viii) ...	Min. 110	Min. 216
8 U.S.C. 1324b(g)(2)(B)(iv)(II).	IRCA; Unfair immigration-related employment practices, second order (per individual discriminated against).	28 CFR 68.52(d)(1)(ix)	Max. 1,100	Max. 2,156
8 U.S.C. 1324b(g)(2)(B)(iv)(III).	IRCA; Unfair immigration-related employment practices, subsequent order (per individual discriminated against).	28 CFR 68.52(d)(1)(x)	Min. 375	Min. 445
8 U.S.C. 1324b(g)(2)(B)(iv)(IV).	IRCA; Unfair immigration-related employment practices, document abuse (per individual discriminated against).	28 CFR 68.52(d)(1)(xii) ...	Max. 3,200	Max. 3,563
8 U.S.C. 1324c(d)(3)(A) ...	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(i)	Min. 3,200	Min. 3,563
8 U.S.C. 1324c(d)(3)(B) ...	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(iii)	Max. 6,500	Max. 8,908
8 U.S.C. 1324c(d)(3)(A) ...	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(ii)	Min. 275	Min. 376
8 U.S.C. 1324c(d)(3)(B) ...	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(iv)	Max. 2,200	Max. 3,005
			Min. 2,200	Min. 3,005
			Max. 5,500	Max. 7,512

FBI

49 U.S.C. 30505(a)	National Motor Vehicle Title Identification System; Violation (per violation).	1,000	1,591
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U.S.C. Citation	Name/Description	CFR Citation	DOJ Penalty as of 11/2/15 (\$) ¹	New DOJ penalty ²
Office of Justice Programs				
42 U.S.C. 3789g(d)	Confidentiality of information; State and Local Criminal History Record Information Systems—Right to Privacy Violation.	28 CFR 20.25	11,000	27,500 **

** Adjusted penalty capped at 2.5 times the penalty amount in effect on November 2, 2015, the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, sec. 701 (“2015 Amendments”). See *id.* § 701(b)(2) (amending section 5(b)(2)(C) of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) to provide that the amount of the first inflation adjustment after the date of enactment of the 2015 Amendments “shall not exceed 150 percent of the amount of that civil monetary penalty on the date of enactment of the [2015 Amendments].”).

¹ The figures set forth in this column represent the penalty as last adjusted by Department of Justice regulation or statute as of November 2, 2015.

² All figures set forth in this table are maximum penalties, unless otherwise indicated.

³ Section 3729(a)(1) of Title 31 states that any person who violates this section “is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person.” 31 U.S.C. 3729(a)(1) (2012) (citation omitted). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to “not less than 2 times the amount of damages which the Government sustains because of the act of that person.” *Id.* § 3729(a)(2). The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

⁴ Section 8706(a)(1) of Title 41 states that “[t]he Federal Government in a civil action may recover from a person—(1) that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty equal to—(A) twice the amount of each kickback involved in the violation; and (B) not more than \$10,000 for each occurrence of prohibited conduct” 41 U.S.C. 8706(a)(1) (2012). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

⁵ Section 216(b) of Title 18 states the civil penalty should be no “more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater.” 18 U.S.C. 216(b) (2012). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under § 216(b).

⁶ Section 2105(b) of Title 41 states, “(b) Civil penalties.—The Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of this title. On proof of that conduct by a preponderance of the evidence—(1) an individual is liable to the Federal Government for a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct; and (2) an organization is liable to the Federal Government for a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct.” 41 U.S.C. 2105(b) (2012). The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

⁷ The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b) (2012). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d) (2015). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8 (2015).

⁸ Section 1956(b)(1) of Title 18 states that “[w]hoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—(A) the value of the property, funds, or monetary instruments involved in the transaction; or (B) \$10,000.” 18 U.S.C. 1956(b)(1) (2012). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

⁹ Section 842(c)(2)(C) of Title 21 states that “[i]n addition to the penalties set forth elsewhere in this subchapter or subchapter II of this chapter, any business that violates paragraph (11) of subsection (a) of this section shall, with respect to the first such violation, be subject to a civil penalty of not more than \$250,000, but shall not be subject to criminal penalties under this section, and shall, for any succeeding violation, be subject to a civil fine of not more than \$250,000 or double the last previously imposed penalty, whichever is greater.” 21 U.S.C. 842(c)(2)(C) (2012). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

¹⁰ Section 856(d)(1) of Title 21 states that “(1) Any person who violates subsection (a) of this section shall be subject to a civil penalty of not more than the greater of—(A) \$250,000; or (B) 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person.” 21 U.S.C. 856(d)(1) (2012). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

Dated: June 24, 2016.

Loretta E. Lynch,
Attorney General.

[FR Doc. 2016–15528 Filed 6–29–16; 8:45 am]

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB33

Civil Monetary Penalty Adjustment and Table

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Interim final rule.

SUMMARY: FinCEN is amending the regulations under the Bank Secrecy Act to adjust the maximum amount or range,

as set by statute, of certain civil monetary penalties within its jurisdiction to account for inflation. This action is being taken to implement the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: *Effective Date:* August 1, 2016.

Comment date: Written comments on this Interim Final Rulemaking must be submitted on or before August 1, 2016.

ADDRESSES: Comments may be submitted, identified by Regulatory