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 Jeff Griffith,
Program Director for Air Traffic Airspace Management.
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DEPARTMENT OF THE TREASURY

27 CFR Part 16

[T.D. ATF-385]

RIN 1512-AB62

Implementation of the Debt Collection Improvement Act of 1996 (Public Law 104-134) With Respect to the Civil Penalties Provision of the Alcoholic Beverage Labeling Act of 1988 (96R-023P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule implements the provisions of the Debt Collection Improvement Act of 1996 with respect to the civil penalties provision of the Alcoholic Beverage Labeling Act of 1988 (ABLA). This regulation implements the statute by increasing the maximum civil monetary penalty from \$10,000 to \$11,000 for violations of the provisions of the ABLA.

EFFECTIVE DATE: The effective date of this final rule is October 23, 1996.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

Debt Collection Improvement Act of 1996

The Debt Collection Improvement Act of 1996 (Pub. L. 104-134, § 31001(s), 110 Stat. 1321-358, 1321-373), enacted on April 26, 1996, amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890, hereinafter "the Act"), 28 U.S.C. 2461 note, by requiring the inflation adjustment of civil monetary penalties. A "civil monetary penalty" is defined in the Act as any penalty, fine or other such sanction that (1) is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and, (3) is

assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. The purpose of the law is to provide more effective tools for collections of delinquent debts owed to the Government.

The amendment to the Act requires that the head of each Federal agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996, and at least once every 4 years thereafter, adjust each civil monetary penalty provided by law within the jurisdiction of the respective agency by the inflation adjustment described under section 5 of the Act. The adjustment of the civil monetary penalty must be done by regulation and published in the Federal Register. The first inflation adjustment is required by October 23, 1996, 180 days after the date of enactment of the Debt Collection Improvement Act of 1996.

Any increase in a civil monetary penalty made pursuant to the amendment will apply only to violations which occur after the date the increase takes effect. The amendment also provides that the first adjustment of a penalty made pursuant to the amendment may not exceed 10 percent of such penalty.

Certain civil monetary penalties are excluded from the mandatory inflation adjustment. The statute specifically provides that the inflation adjustment does not apply to penalties under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, and the Social Security Act. Most of the civil monetary penalties administered by ATF are imposed by the Internal Revenue Code of 1986, and are thus not subject to the inflation adjustment mandated by the Act. Accordingly, the only civil monetary penalty enforced by ATF which is subject to the inflation adjustment is the civil monetary penalty imposed by the Alcoholic Beverage Labeling Act (ABLA), 27 U.S.C. 218.

Alcoholic Beverage Labeling Act

On November 18, 1988, the Alcoholic Beverage Labeling Act of 1988, Title VIII of the Anti-Drug Abuse Act of 1988, was enacted. The law requires that the following health warning statement appear on the labels of all containers of alcoholic beverages sold or distributed in the United States, as well as on containers of alcoholic beverages that are sold, distributed, or shipped to members or units of the U.S. Armed Forces, including those located outside the United States:

Government Warning: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

See 27 U.S.C. 215. The health warning statement requirement applies to alcoholic beverages bottled on or after November 18, 1989.

Section 207 of the ABLA, 27 U.S.C. 218, provides that any person who violates the provisions of the ABLA is subject to a civil penalty of not more than \$10,000, with each day constituting a separate offense.

Civil Monetary Penalty Inflation Adjustment for Non-Compliance With the ABLA

The Act provides that the inflation adjustment will be determined by increasing the maximum civil monetary penalty by the cost-of-living adjustment. The "cost-of-living" adjustment is the percentage by which the consumer price index for all-urban consumers (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law. Any increase determined under section 5 of the Act must be rounded in accordance with the provisions of that section, which provides that for penalties less than or equal to \$10,000, the increase shall be rounded to the nearest multiple of \$1,000.

Since the ABLA was enacted in 1988, the inflation adjustment is achieved by calculating the percentage by which the CPI for June of 1995 (456.7) exceeds the CPI for June of 1988 (353.5). This results in an inflation factor of approximately 1.29. Thus, the maximum penalty amount after increase and rounding would be \$13,000. However, the Debt Collection Improvement Act of 1996 provides that the first adjustment of a civil monetary penalty may not exceed 10 percent of such penalty. Accordingly, the regulations in Part 16 are amended to provide that the maximum penalty amount for violations of the ABLA is \$11,000 (\$10,000×10%=\$1,000; \$10,000×\$1,000=\$11,000).

The regulations in 27 CFR Part 16 implement the statutory requirement for a health warning statement under the ABLA; however, the current regulations do not specifically reference the penalty imposed by 27 U.S.C. 218. ATF is accordingly amending the regulations to include a new section 16.33 which will set forth the \$10,000 penalty imposed by the ABLA. The new regulation will

also explain that this civil penalty shall be periodically adjusted for inflation in accordance with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990. Finally, the regulation shall state that for violations occurring after October 23, 1996, the civil penalty shall be not more than \$11,000 for each offense.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in E.O. 12866, because any economic effects flow directly from the underlying statute and not from this final rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

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 the agency was not required to publish a 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

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The author of this document is James P. Ficaretta, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 16

Beer, Consumer protection, Customs duties and inspection, Health, Imports, Labeling, Liquors, Packaging and containers, Safety, and Wine.

Authority and Issuance

27 CFR Part 16—ALCOHOLIC BEVERAGE HEALTH WARNING STATEMENT is amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 16 is revised to read as follows:

Authority: 27 U.S.C. 205, 215, 218; 28 U.S.C. 2461 note.

Par. 2. Section 16.33 is added to Subpart D to read as follows:

§ 16.33 Civil penalties.

(a) *General.* Any person who violates the provisions of this part shall be subject to a civil penalty of not more than \$10,000, and each day shall constitute a separate offense.

(b) *Adjusted penalty for violations occurring after October 23, 1996.* Pursuant to the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the civil penalty provided for in paragraph (a) of this section shall be periodically adjusted in accordance with inflation. Accordingly, for violations occurring after October 23, 1996, the civil penalty shall be not more than \$11,000.

Signed: September 25, 1996.

John W. Magaw,
Director.

Approved: October 3, 1996.

Timothy E. Skud,
Acting Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement).
[FR Doc. 96-27083 Filed 10-22-96; 8:45 am]
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Office of Foreign Assets Control

31 CFR Parts 500, 515, 535, 550, 560, 575, 585, 590 and 595

Foreign Assets Control Regulations, Cuban Assets Control Regulations, Iranian Assets Control Regulations, Libyan Sanctions Regulations, Iranian Transactions Regulations, Iraqi Sanctions Regulations; Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, UNITA (Angola) Sanctions Regulations, Terrorism Sanctions Regulations; Implementation of Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended by the Debt Collection Improvement Act of 1996

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This final rule amends the Foreign Assets Control Regulations, Cuban Assets Control Regulations, Iranian Assets Control Regulations, Libyan Sanctions Regulations, Iranian Transactions Regulations, Iraqi Sanctions Regulations, Federal Republic

of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, UNITA (Angola) Sanctions Regulations, and Terrorism Sanctions Regulations (collectively, the "Regulations") to implement section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, by adjusting for inflation the amount of the civil monetary penalties that may be assessed under the Regulations. The rule also amends the penalty provisions of the Regulations to reflect a 1994 amendment to 18 U.S.C. 1001. Certain of the Regulations are also amended to note the availability of higher criminal fines under 18 U.S.C. 3571.

EFFECTIVE DATE: October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott, Chief, Civil Penalties Program (tel.: 202/622-6140); or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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