

Some commenters raised procedural objections to the Department's proposed delay. The Associated Builders and Contractors, the Financial Services Institute, and Littler Mendelson, P.C.'s Workplace Policy Institute asserted that the 19-day comment period for this rulemaking was insufficient, and critiqued the Department's statement in the NPRM that "WHD will consider only comments about its proposal to delay the rule's effective date." 86 FR 8327. The Department believes that the 19-day comment period did provide a meaningful opportunity to comment on the proposed delay. The Department received over 1,500 comments in response to the NPRM proposing to delay the January 2021 Rule's effective date, comparable to the approximately 1,800 comments it received in response to the substantive notice of proposed rulemaking that it published in September 2020. See 85 FR 60600. Moreover, given the Independent Contractor Rule's original March 8, 2021 effective date, it would have been impracticable to afford a longer comment period. Had the Department allowed for a longer comment period, the Independent Contractor Rule would have taken effect before the delay could begin, which would have defeated the purpose of this rule and caused additional confusion for regulated entities. As to the issue of the scope of comments sought in this rulemaking, the Department sought comments about, and considered whether, issues of policy, law, and fact warrant an extension of the Independent Contractor Rule's original effective date by 60 days. If after having had additional time to consider the January 2021 Rule, the Department decides to propose any changes to the January 2021 Rule, it will at that point solicit comments on its substantive proposal.

Other commenters, including Littler Mendelson, P.C. and the National Federation of Independent Business, asserted that any delay to the

Independent Contractor Rule's March 8, 2021 effective date must be published at least 30 days before such a delay takes effect. The Department disagrees. Section 553(d) of the Administrative Procedure Act provides that substantive rules should take effect not less than 30 days after the date they are published in the **Federal Register** unless "otherwise provided by the agency for good cause found." 5 U.S.C. 553(d)(3). Even if this provision were to apply, the Department finds that it would have good cause to make this rule effective immediately upon publication. Like allowing for a longer comment period, allowing for a 30-day delay between publication and the effective date of this rulemaking would result in the January 2021 Rule taking effect before the delay begins, which would undermine this rule's fundamental purpose of delaying the effective date before the Independent Contractor Rule takes effect in accord with the Regulatory Freeze Memorandum and result in additional confusion for regulated entities. The Regulatory Freeze Memorandum was issued on January 20, 2021, only 47 days before the rule's original effective date of March 8, 2021. It would not have been practicable to issue an NPRM proposing to delay the Independent Contractor Rule and allow for ample time for public comment on that proposal in time to publish a final rule not less than 30 days before March 8. Moreover, this rulemaking merely implements a 60-day delay of the Independent Contractor Rule, rather than itself imposing any new compliance obligations on the regulated community. Therefore, the Department finds that a lapse between publication and the effective date of this rule delaying the Independent Contractor Rule's effective date is unnecessary. Because allowing for a 30-day period between publication and the effective date of this rulemaking is both unnecessary and impracticable, there is good cause to make this final rule delaying the Independent Contractor Rule's effective date effective immediately upon publication.

After reviewing timely comments submitted, the Department has decided to delay the Independent Contractor Rule's effective date from March 8, 2021, to May 7, 2021, as proposed. This delay will allow the Department additional time to review the multiple issues of law, policy, and fact that warrant additional review and consideration in accordance with the Regulatory Freeze Memorandum before the Independent Contractor Rule goes into effect.

Signed this 2nd day of March, 2021.

Jessica Looman,

Principal Deputy Administrator, Wage and Hour Division.

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DEPARTMENT OF THE TREASURY

Office of the Secretary of the Treasury

31 CFR Parts 16, 27, and 50

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Departmental Offices Treasury.

ACTION: Final rule; direct final rule.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") publishes this final rule to adjust its civil monetary penalties ("CMPs") for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as "the Act"). The Department also publishes this direct final rule to implement the inflation adjustment for the civil monetary penalties that may be assessed under 31 CFR part 16 and updates the inflation adjustments through 2021.

DATES: Effective dates: *The final rule amendments to 31 CFR part 27 and 31 CFR part 50 are effective March 4, 2021.*

The direct final rule amendments to 31 CFR part 16 are effective May 3, 2021.

Comments due: Written comments are due on or before April 5, 2021. If the Department receives substantive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: You may submit comments on the amendments to 31 CFR part 16 by any of the following methods:

—*Federal eRulemaking Portal:* <http://www.regulations.gov>.

—*Mail:* Richard Dodson, Senior Counsel, General Law, Ethics, and Regulation, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The www.regulations.gov site will accept comments until 11:59 p.m. Eastern Time on the comment due date. Received comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comments or supporting materials that you consider confidential or

and Seyfarth Shaw on behalf of the Coalition for Workforce Innovation, argued that the Department had not based its reasons for proposing a delay on those enumerated in OMB Memorandum M-21-14. But the issues the Department indicated it would consider if allowed additional time, including the FLSA's purpose, the costs and benefits of the rule, and the clarity the rule does or does not provide, are among the types of issues referenced in the memorandum. See OMB Memorandum M-21-14 (directing agencies to consider in deciding whether delay of a rule's effective date is appropriate, among other things, whether "the rule reflected proper consideration of all relevant facts," "the rule reflected due consideration of the agency's statutory or other legal obligations," "the rule is based on a reasonable judgment about the legally relevant policy considerations," and "objections to the rule were adequately considered").

inappropriate for public disclosure. Properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>. The Department will consolidate all received comments and make them available without change. Commenters are encouraged to submit comments electronically via www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For information regarding the Terrorism Risk Insurance Program's CMPs, contact Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622-2922 (not a toll-free number), or Lindsey Baldwin, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, at (202) 622-3220 (not a toll free number). Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

For information regarding the Treasury-wide CMPs, contact Richard Dodson, Senior Counsel, General Law, Ethics, and Regulation, 202-622-9949.

SUPPLEMENTARY INFORMATION:

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note ("the Inflation Adjustment Act"), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74) ("the 2015 Act"), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act requires agencies to adjust the level of CMPs with an initial "catch-up" adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, without needing to provide notice and the opportunity for public comment required by 5 U.S.C. 553. The Department's initial catch-up adjustment interim final rules were published on December 7, 2016 (Departmental Offices) (81 FR 88600), and for 31 CFR part 27, on February 11, 2019 (84 FR 3105). The Department's 2018 annual adjustment was published on March 19, 2018 (83 FR 11876), the Department's 2019 annual adjustment was published on April 17, 2019 (84 FR 15955), and the Department's 2020 annual adjustment was published on February 21, 2020 (85 FR 10063). This rule constitutes the Department's 2021

annual adjustment. The 2015 Act provides that any increase in a CMP shall apply to CMPs that are assessed after the date the increase takes effect, regardless of whether the underlying violation predated such increase.¹

This rule also amends regulations that provide civil penalties for false, fictitious, or fraudulent claims or written statements under the Department's Regulations Implementing the Program Fraud Civil Remedies Act of 1986, at 31 CFR part 16. Adjustments to CMPs under that Part were inadvertently omitted from the Department's initial catch-up adjustment and its subsequent annual adjustments. In particular, this rule adjusts for inflation the maximum amount of the civil monetary penalties that may be assessed under 31 CFR part 16, and it updates the inflation adjustments through 2021 in accordance with instructions from the Office of Management and Budget.

Treasury is currently authorized to impose CMPs against persons who make false, fictitious, or fraudulent claims or who make false, fictitious, or fraudulent written statements, pursuant to 31 U.S.C. 3802(a). The maximum CMPs under this statute were established on October 21, 1986, and they have not been adjusted. The maximum CMPs established were \$5,000 for each qualifying false claim or false written statement.

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act and the Office of Management and Budget guidance required by the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the Consumer Price Index for all Urban Consumers ("CPI-U") for the October preceding the date of the adjustment and the prior year's October CPI-U. As set forth in Office of Management and Budget Memorandum M-21-10 of December 23, 2020, the adjustment multiplier for 2021 is 1.01182. In order to complete the 2021 annual adjustment, each current CMP is multiplied by the 2021 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of \$1.

With regard to the CMPs authorized by 31 U.S.C. 3802(a), adjustments had to be made back to 2016. Pursuant to OMB

Guidance, the relevant inflation factor is 2.15628 for the initial catch-up adjustment. Because application of the factor would result in an adjustment of greater than 150% for both 31 U.S.C. 3802(a) CMPs, the initial adjustment of these penalties is limited to 150%. The relevant inflation factors for 2017 through 2021 are 1.01636 (2017), 1.02041 (2018), 1.02522 (2019), 1.01764 (2020), and 1.01182 (2021).²

With respect to the \$5,000 CMPs, applying the initial 150% adjustment would result in a maximum penalty amount of \$7,500. Multiplying that amount by the 2017 factor of 1.01636 and rounding to the nearest dollar would yield a maximum penalty amount of \$7,623. Multiplying that amount by the 2018 factor of 1.02041 and rounding yields a maximum penalty amount of \$7,779. Multiplying that amount by the 2019 factor of 1.02522 and rounding yields a maximum penalty amount of \$7,975. Multiplying that amount by the 2020 factor of 1.01764 and rounding yields a maximum penalty amount of \$8,116. Finally, applying the 2021 factor of 1.01182 to that amount results in an adjusted maximum penalty of \$8,212.

Procedural Matters

1. Administrative Procedure Act

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies to make annual adjustments for inflation to CMPs, without needing to provide notice and the opportunity for public comment and a delayed effective date required by 5 U.S.C. 553. Additionally, the methodology used for adjusting CMPs for inflation is provided by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice, an opportunity for public comment, and a delayed effective date are not required for this rule, with the exception of the initial catch-up adjustment to 31 CFR part 16.

2. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

¹ However, the increased CMPs apply only with respect to underlying violations occurring after the date of enactment of the 2015 Act, *i.e.*, after November 2, 2015.

² OMB Memoranda regarding the initial catch-up and yearly inflation adjustments include M-16-06 (Feb. 24, 2016), M-17-11 (Dec. 16, 2016), M-18-03 (Dec. 15, 2017), M-19-04 (Dec. 14, 2018), M-20-05 (Dec. 16, 2019), and M-21-10 (Dec. 23, 2020).

3. Executive Order 12866

This rule is not a significant regulatory action as defined in section 3.f of Executive Order 12866.

4. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

5. Direct Final Procedures

Treasury is issuing the amendments to 31 CFR part 16 as a direct final rule. The effective date of this rule is May 3, 2021 without further notice, unless Treasury receives written adverse comments before April 5, 2021.

If Treasury receives timely written adverse comments on the amendments to 31 CFR part 16, Treasury will withdraw the regulation before its effective date.

List of Subjects

31 CFR Part 16

Administrative Practice and Procedure, Claims, Fraud, Penalties.

31 CFR Part 27

Administrative Practice and Procedure, Penalties.

31 CFR Part 50

Insurance, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, parts 16, 27, and 50 of title 31 of the Code of Federal Regulations are amended as follows:

PART 16—REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 31 U.S.C. 3801–3812.

■ 2. Effective May 3, 2021 amend § 16.3 by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 16.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$8,212 for each such claim.

* * * * *

(b) * * * (1) * * *

(ii) Includes or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the content of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$8,212 for each such statement.

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PART 27—CIVIL PENALTY ASSESSMENT FOR MISUSE OF DEPARTMENT OF THE TREASURY NAMES, SYMBOLS, ETC.

■ 3. The authority citation for part 27 continues to read as follows:

Authority: 31 U.S.C. 321, 333.

■ 4. Amend § 27.3 by revising paragraph (c) to read as follows:

§ 27.3 Assessment of civil penalties.

* * * * *

(c) *Civil Penalty.* An assessing official may impose a civil penalty on any person who violates the provisions of paragraph (a) of this section. The amount of a civil monetary penalty shall not exceed \$8,212 for each and every use of any material in violation of paragraph (a), except that such penalty shall not exceed \$41,056 for each and every use if such use is in a broadcast or telecast.

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PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 5. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322, as amended by Pub. L. 109–144, 119 Stat. 2660, Pub. L. 110–160, 121 Stat. 1839, Pub. L. 114–1, 129 Stat. 3, and Pub. L. 116–94, 133 Stat. 2534 (15 U.S.C. 6701 note); Pub. L. 114–74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note).

■ 6. Amend § 50.83 by revising paragraph (a) to read as follows:

§ 50.83 Adjustment of civil monetary penalty amount.

(a) *Inflation Adjustment.* Any penalty under the Act and these regulations may not exceed the greater of \$1,436,220 and, in the case of any failure to pay, charge, collect or remit amounts in accordance with the Act or these regulations such amount in dispute.

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John T. Norris,

Assistant Secretary for Management (Acting).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2021–0130]

RIN 1625-AA00

Safety Zone; Atlantic Intracoastal Waterway, Horry County, SC

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing an emergency temporary safety zone that includes all waters of the Waccamaw River from Enterprise Landing at Atlantic Intracoastal Waterway (AICW) statute mile 375 north to Fantasy Harbour Fixed Bridge at AICW statute mile 366. The safety zone is needed to protect persons and property during a period of high water in the area caused by heavy rainfall and runoff. Vessels operating within the zone shall proceed at speeds that do not create a wake. Vessels that desire to transit this zone at speeds that create a wake, shall first seek authorization from the Captain of the Port (COTP) Charleston.

DATES: This rule is effective without actual notice from March 4, 2021 through March 7, 2021. For the purposes of enforcement, actual notice will be used from March 1, 2021 until March 4, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2021–0130 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule call or email Lieutenant Chad Ray, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email Chad.L.Ray@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code