

a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

C. Operational Requirements

1. Changes to NuScale design certification generic TS and other operational requirements that were completely reviewed and approved in the design certification rule and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Changes that require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Changes to NuScale design certification generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic TS and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances, as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic TS and other operational requirements that were not completely reviewed and approved or require additional TS and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic TS or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of § 52.7. The granting of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for the issuance, amendment, or renewal of a license, or for operation under § 52.103(a), who believes that an operational requirement approved in the DCD or a TS derived from the generic TS must be changed, may petition to admit such a contention into the proceeding. The petition must comply with the general requirements of § 2.309 of this chapter and must either demonstrate why special circumstances as defined in § 2.335 of this chapter are present or demonstrate that the proposed change is necessary for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response to the petition. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific TS or other operational requirements are subject to a hearing as part of the licensing proceeding.

6. After issuance of a license, the generic TS have no further effect on the plant-

specific TS. Changes to the plant-specific TS will be treated as license amendments under 10 CFR 50.90.

IX. [Reserved]

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes that are made to Tier 1 and Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the sensitive unclassified non-safeguards information (including proprietary information and security-related information) and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any periods of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations that provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any periods of renewal).

4.a. The applicant for NuScale shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal).

b. An applicant or licensee who references this appendix shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any periods of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each departure. This report must be filed in accordance with the filing requirements applicable to reports in § 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its plant-specific DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates shall be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 50.71(e) and 52.3.

3. The reports and updates required by paragraphs X.B.1 and X.B.2 of this appendix must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes its finding required by § 52.103(g), the report must be submitted semiannually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by § 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Dated: January 11, 2023.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

Financial Crimes Enforcement Network; Inflation Adjustment of Civil Monetary Penalties

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

ACTION: Final rule.

SUMMARY: FinCEN is publishing this final rule to reflect inflation adjustments to its civil monetary penalties as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. This rule adjusts certain maximum civil monetary penalties within the jurisdiction of FinCEN to the amounts required by that Act.

DATES: Effective January 19, 2023.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825, or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In order to improve the effectiveness of civil monetary penalties (CMPs) and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended in 2015 by section 701 of Public Law 114–74, codified at 28 U.S.C. 2461 note (the Act), requires Federal agencies to adjust for inflation each CMP provided by law within the jurisdiction of the agency. The Act requires agencies to adjust the level of CMPs with an initial “catch-up” adjustment through an interim final rulemaking. After the initial “catch-up”

adjustment, agencies are required to adjust CMPs annually and to make the adjustments notwithstanding 5 U.S.C. 553, which requires notice-and-comment rulemaking for certain agency actions. The 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

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the Act. Under the Act and Office of Management and Budget (OMB) guidance, 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 OMB Memorandum M-23-05 of December 15, 2022, the adjustment multiplier for 2023 is 1.07745. In order to complete the 2023 annual adjustment, each current CMP (all of which were themselves last adjusted in 2022) is multiplied by the 2023 adjustment multiplier. Under the Act, any increase in CMP must be rounded to the nearest multiple of \$1.²

Procedural Matters

1. Administrative Procedure Act

Section 4(b) of the Act requires agencies, beginning in 2017, to make annual adjustments for inflation to CMPs notwithstanding the notice and comment requirements of 5 U.S.C. 553. Additionally, the methodology used for adjusting CMPs for inflation, effective 2017, is provided by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity for public comment and a delayed effective date are not required for this rule.

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.

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.

List of Subjects in 31 CFR Part 1010

Authority delegations (Government agencies), Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, part 1010 of chapter X of title 31 of the Code of Federal Regulations is amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 2006, Pub. L. 114–41, 129 Stat. 458–459; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 2. Amend § 1010.821 by revising table 1 following paragraph (b) to read as follows:

§ 1010.821 Penalty adjustment and table.

* * * * *

(b) * * *

TABLE 1 OF § 1010.821—PENALTY ADJUSTMENT TABLE

U.S. Code citation	Civil monetary penalty description	Penalties as last amended by statute	Maximum penalty amounts or range of minimum and maximum penalty amounts for penalties assessed on or after 1/19/2022
12 U.S.C. 1829b(j)	Relating to Recordkeeping Violations For Funds Transfers	\$10,000	\$24,793
12 U.S.C. 1955	Willful or Grossly Negligent Recordkeeping Violations	10,000	24,793
31 U.S.C. 5318(k)(3)(C)	Failure to Terminate Correspondent Relationship with Foreign Bank.	10,000	16,771
31 U.S.C. 5321(a)(1)	General Civil Penalty Provision for Willful Violations of Bank Secrecy Act Requirements.	25,000–100,000	67,544–270,180
31 U.S.C. 5321(a)(5)(B)(i)	Foreign Financial Agency Transaction—Non-Willful Violation of Transaction.	10,000	15,611
31 U.S.C. 5321(a)(5)(C)(i)(I)	Foreign Financial Agency Transaction—Willful Violation of Transaction.	100,000	156,107
31 U.S.C. 5321(a)(6)(A)	Negligent Violation by Financial Institution or Non-Financial Trade or Business.	500	1,350
31 U.S.C. 5321(a)(6)(B)	Pattern of Negligent Activity by Financial Institution or Non-Financial Trade or Business.	50,000	105,083
31 U.S.C. 5321(a)(7)	Violation of Certain Due Diligence Requirements, Prohibition on Correspondent Accounts for Shell Banks, and Special Measures.	1,000,000	1,677,030
31 U.S.C. 5330(e)	Civil Penalty for Failure to Register as Money Transmitting Business.	5,000	9,966

¹ The increased CMPs, however, apply only with respect to underlying violations occurring after November 2, 2015 the date of enactment of the most recent amendment to the Act.

² FinCEN has previously described that it applied a catch-up adjustment for each penalty subject to

the Act, based on the year and corresponding amount(s) for which the maximum penalty or range of minimum and maximum penalties was established or last adjusted, whichever is later. See Civil Monetary Penalty Adjustment and Table, 81 FR 42503, 42504 (June 30, 2016). Because the year

varies for different penalties, penalties that were originally of the same size when promulgated can have different values today pursuant to the application of the Act.

Himamauli Das,

Acting Director, Financial Crimes
Enforcement Network.

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POSTAL REGULATORY COMMISSION

39 CFR Part 3035

[Docket Nos. RM2017-1 and RM2022-2;
Order No. 6399]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Final rulemaking.

SUMMARY: The Commission is adopting a final rule concerning the minimum amount that the Postal Service's competitive products as a whole are required to contribute to institutional costs annually. The rule as adopted uses a formula-based approach to annually calculate competitive products' appropriate share of institutional costs. For additional information, Order No. 6399 can be accessed electronically through the Commission's website at <https://www.prc.gov>.

DATES: Effective February 21, 2023.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Relevant Statutory Requirements

Section 3633(a)(3) of title 39 of the United States Code requires the Commission to "ensure that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service." 39 U.S.C. 3633(a)(3). Section 3633(b) requires that the Commission revisit the appropriate share regulation at least every 5 years in order to determine if the minimum contribution requirement should be "retained in its current form, modified, or eliminated." 39 U.S.C. 3633(b). In making such a determination, the Commission is required to consider "all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products." *Id.*

II. Background

Pursuant to section 3633(b), the Commission initiated Docket No. RM2017-1 for the purpose of conducting its second review of the appropriate share requirement since the enactment of the Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3198 (2006). In its second review of the appropriate share, the Commission found that market conditions have changed since the PAEA's enactment and since the Commission's last review of the appropriate share.¹ As a result, in Order No. 4963, the Commission adopted a final rule implementing a dynamic formula-based approach to setting the appropriate share.²

However, Order No. 4963 was appealed by the United Parcel Service, Inc. and later remanded to the Commission for further consideration by the United States Court of Appeals for the District of Columbia Circuit.³ The court identified two major aspects of Order No. 4963 for the Commission to clarify on remand. The Commission issued Order No. 6043, which was a supplemental notice of proposed rulemaking that addressed the issues identified by the court and provided an opportunity for interested persons to file initial comments and reply comments concerning the Commission's third 5-year review of the appropriate share as required by 39 U.S.C. 3633(b).⁴ In addition, the Commission issued Order No. 6269, which invited public comment relating to the Commission's analysis pursuant to uncodified section 703(d) of the Postal Accountability and Enhancement Act (PAEA).⁵

The Commission received and considered comments with respect to

nearly every aspect of the Commission's findings in Order Nos. 6043 and 6269.

In Section IV., the Commission addresses comments relating to the Commission's statutory interpretation of the appropriate share provisions at 39 U.S.C. 3633(a)(3) and (b). After considering these comments, the Commission has determined not to alter its interpretation as articulated in Order No. 6043, which the Commission continues to conclude is consistent with the PAEA's text and structure, as well as its context and legislative history. *See* Section IV.

In Section V.A., the Commission addresses comments relating to the application of the "uniquely or disproportionately associated" phrase from 39 U.S.C. 3633(b) to the Postal Service's accrued costs. The Commission continues to find that all attributable costs are already included in the 39 U.S.C. 3633(a)(3) price floor and are furthermore implicitly considered as part of the formula. *See* Section V.A.2.b. The price floors set under 39 U.S.C. 3633(a)(1) and (a)(3) fully ameliorate any competitive deficit alleged to be unaddressed by the price floor under 39 U.S.C. 3633(a)(2), and that the use of incremental costs for purposes of the price floors under 39 U.S.C. 3633(a)(1) and (a)(2) is sufficient to prevent subsidization of Competitive products. *See* Section V.A.3.b. Any further attempt to account for attributable costs as part of the appropriate share would constitute double-counting of those costs that would be economically unsound and potentially harmful to the Postal Service. *See* Section V.A.4.b. There is no meaningful relationship between unattributed inframarginal costs and Competitive products; there are no costs uniquely or disproportionately associated with Competitive products within currently-existing institutional costs; and using economically sound measurement is reasonable. *See* Sections V.A.5.b., V.A.6.b., V.A.7.b. The arbitrary allocation of institutional costs to Competitive products would contravene the intent of the PAEA, would be economically unsound, would degrade the existing costing methodology, and could harm the Postal Service and consumers. *See* Section V.A.8.b.

In Section V.B., the Commission addresses comments relating to the prevailing competitive conditions in the market and other relevant circumstances. The Commission confirms that revenue is the appropriate measure of market size, and that the profitability of competitors is relevant to assessing the prevailing competitive

¹ *See* Docket No. RM2017-1, Order Adopting Final Rules Relating to the Institutional Cost Contribution Requirement for Competitive Products, January 3, 2019, at 4-12, 114-170 (Order No. 4963); *see* 84 FR 537 (January 1, 2019).

² Order Adopting Final Rules Relating to the Institutional Cost Contribution Requirement for Competitive Products, January 3, 2019 (Order No. 4963). The Final Rulemaking was published in the **Federal Register** on January 31, 2019. *See* 84 FR 537 (Jan. 31, 2019).

³ *UPS II*, 955 F.3d 1038, No. 19-1026, ECF Document No. 1846181, at 1, (issuing formal mandate), June 8, 2020.

⁴ Supplemental Notice of Proposed Rulemaking and Order Initiating the Third Review of the Institutional Cost Contribution Requirement for Competitive Products, November 18, 2021 (Order No. 6043). The Supplemental Notice of Proposed Rulemaking was published in the **Federal Register** on August 13, 2018. *See* 86 FR 67882 (Nov. 30, 2021).

⁵ Notice and Order Providing an Opportunity to Comment on the Commission's Section 703(d) Analysis, September 7, 2022 (Order No. 6269); Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, Title VII, § 703, 120 Stat. 3198, 3244 (2006).