

§ 740.1 Definitions.

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(b) *Insured credit union and federally insured credit union* as used in this part mean a credit union with National Credit Union Administration share insurance.

(c) *Nonfederally insured credit union* as used in this part means a credit union with either no account insurance or with primary account insurance provided by some entity other than the National Credit Union Administration.

■ 3. Amend § 740.4 by revising paragraph (c) to read as follows:

§ 740.4 Requirements for the official sign.

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(c) To avoid any member confusion from the use of the official NCUA sign, federally insured credit unions are prohibited from receiving account funds at any teller station or window where any nonfederally insured credit union also receives account funds. As exceptions to this prohibition:

(1) A teller in a branch of a federally insured credit union may accept account funds for nonfederally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign that states "This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. While this credit union is federally insured, not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly." This sign must be similar to the official sign in terms of design, color, and font.

(2) A teller in a facility operated by a non-credit union entity may accept account funds for both federally insured credit unions and nonfederally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign stating "This facility accepts share deposits for multiple credit unions. Not all of these credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly." This sign must be similar to the official sign in terms of design, color, and font.

(3) A teller in a branch of a nonfederally insured credit union may accept account funds for federally insured credit unions. No teller in a

nonfederally insured credit union may display the official NCUA sign.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is amending its rules of practice and procedure to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustment, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: *Effective Date:* March 4, 2009.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Associate General Counsel, or Jon Canerday, Trial Attorney, Office of General Counsel, NCUA, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Debt Collection Improvement Act of 1996¹ (DCIA) amended the Federal Civil Penalties Inflation Adjustment Act of 1990² (FCPIA Act) to require every Federal agency to enact regulations that adjust each civil monetary penalty (CMP) provided by law under its jurisdiction by the rate of inflation at least once every 4 years. These periodic adjustments are to be calculated pursuant to the inflation adjustment formula in section 5(b) of the FCPIA Act. Section 6 of the FCPIA Act specifies that inflation-adjusted CMPs will only apply to violations that occur after the effective date of the adjustment.

The inflation adjustment is based on the percentage increase in the Consumer

Price Index for all urban consumers (CPI-U) published by the Department of Labor.³ Specifically, section 5(b) of the FCPIA Act defines the term "cost-of-living adjustment" as "the percentage (if any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index 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." The amount of each inflation adjustment must then be rounded to a number prescribed by section 5(a) of the FCPIA Act.

B. Mathematical Calculations of the Adjustments

NCUA last adjusted the CMPs it is authorized to impose in 2004. 69 FR 60080. Accordingly, the current adjustment of these CMPs will be the percentage by which the CPI-U for the month of June 2007 exceeds the CPI-U for the month of June 2004. According to the Bureau of Labor Statistics, the CPI-U for the month of June 2004 was 189.7 and the CPI-U for the month of June 2007 was 208.352. The percentage by which the 2007 figure exceeds the 2004 figure is 9.8 percent. Thus, the CMPs should be multiplied by 9.8 percent, the resulting dollar amount rounded up or down according to the rounding requirements of the FCPIA Act, and then that amount added to the current penalty. In some cases, the rounding rules resulted in no adjustment to the amount of the CMP.

In previous years, the Board has explained in detail the adjustment procedure for each of the CMPs under its jurisdiction. Detailed explanations were provided because some CMPs were adjusted for the first time, requiring the use of different formulas. In view of the fact that all of the CMPs were last adjusted in 2004, such detailed explanations are no longer necessary. For that reason, and to be consistent with the other banking agencies, the Board will show the adjustments in table format. The following table shows both the present CMPs, the adjustment methodology, and the CMPs after being adjusted for inflation. The table published in 12 CFR 747.1001 shows only the adjusted CMPs, not the calculations.

³ The CPI-U is published by the Department of Labor, Bureau of Labor Statistics, and is available at its Web site: <http://www.bls.gov/cpi/>.

¹ Public Law 104-134, 31001(s), 110 Stat. 1321-373, (Apr. 26, 1996). The provision is codified at 28 U.S.C. 2461 note.

² Public Law 101-410, 104 Stat. 890, (Oct. 5, 1990), also codified at 28 U.S.C. 2461 note.

U.S. code citation	Tier or description (if applicable)	Current maximum penalty (in dollars)	Percentage increase	Amount of increase (in dollars)	Amount of increase— after rounding ⁴ (in dollars)	Adjusted maximum penalty (in dollars)
12 U.S.C. 1782(a)(3)	Inadvertent	\$2,200 ⁵	9.8	\$216	\$0	No Change.
	Non-inadvertent	22,000	9.8	2,156	0	No Change.
	Intentional or reck- less.	1,175,000 (or 1% of total assets).	9.8	115,150	125,000	\$1,300,000 (or 1% of total as- sets).
12 U.S.C. 1782(d)(2)	Tier 1	2,200	9.8	216	0	No Change.
	Tier 2	22,000	9.8	2,156	0	No Change.
	Tier 3	1,175,000 (or 1% of total assets).	9.8	115,150	125,000	1,300,000 (or 1% of total assets).
12 U.S.C. 1785(e)(3)	110	9.8	11	0	No Change.
12 U.S.C. 1786(k)(2)	Tier 1	6,500	9.8	637	1,000	7,500.
	Tier 2	32,500	9.8	3,185	5,000	37,500.
	Tier 3	1,250,000 (for natural person) 1,250,000 (or 1% of total as- sets) (for CU).	9.8	122,500	125,000	1,375,000 (for natural person) 1,375,000 (or 1% of total as- sets) (for CU).
42 U.S.C. 4012a(f)	Per violation	385	9.8	38	0	No Change.
	Per year	120,000	9.8	11,760	10,000	130,000.

The NCUA Board now adopts this final rule to adjust the forgoing CMPs for the rate of inflation, as required by the FCPIA Act. As provided in the final rule, the revised CMP amounts will only apply to violations that occur after the effective date of the final rule.

C. Regulatory Procedures

Final Rule Under the Administrative Procedures Act

The FCPIA Act requires adjustments of CMPs for inflation to occur at least every four years. The FCPIA Act provides federal agencies with no discretion in the adjustment of CMPs for inflation. Thus, NCUA is unable to vary the amount of the adjustments to reflect any views or suggestions provided by commenters. Further, the regulation is ministerial and technical. For all of these reasons, the NCUA Board finds good cause to determine that public notice and comment for this new regulation is unnecessary, impractical and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). These same reasons also provide the Board with good cause to

adopt an effective date for this regulation that is less than 30 days after the date of publication in the **Federal Register**, pursuant to the APA, 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (those under ten million dollars in assets). This final rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order. This final rule will apply to all federally-insured credit unions, but it 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. NCUA has determined the final rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law No. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of SBREFA, it is not a major rule.

List of Subjects in 12 CFR Part 747

Credit unions, Civil monetary penalties.

By the National Credit Union Administration Board on January 5, 2009.

Mary Rupp,

Secretary of the Board.

■ Accordingly, the NCUA amends 12 CFR part 747 as follows:

⁴ The FCPIA Act's rounding rules require that an increase of a CMP be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000. Section 5(a) of the FCPIA Act, 28 U.S.C. 2461 note.

⁵ Erroneously published in the **Federal Register** as \$22,000.

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 1. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787; 42 U.S.C. 4012a; Public Law 101–410; Public Law 104–134.

■ 2. Subpart K is revised to read as follows:

Subpart K—Inflation Adjustment of Civil Monetary Penalties

§ 747.1001 Adjustment of civil money penalties by the rate of inflation.

(a) NCUA is required by the Federal Civil Penalties Inflation Adjustment Act

of 1990 (Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note)) to adjust the maximum amount of each civil money penalty within its jurisdiction by the rate of inflation. The following chart displays those adjustments, as calculated pursuant to the statute:

U.S. code citation	CMP description	New maximum amount
(1) 12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	\$2,200.
(2) 12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	\$22,000.
(3) 12 U.S.C. 1782(a)(3)	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	\$1,300,000 or 1 percent of the total assets of the credit union, whichever is less.
(4) 12 U.S.C. 1782(d)(2)(A)	First tier	\$2,200.
(5) 12 U.S.C. 1782(d)(2)(B)	Second tier	\$22,000.
(6) 12 U.S.C. 1782(d)(2)(C)	Third tier	\$1,300,000 or 1 percent of the total assets of the credit union, whichever is less.
(7) 12 U.S.C. 1785(e)(3)	Non-compliance with NCUA security regulations.	\$110.
(8) 12 U.S.C. 1786(k)(2)(A)	First tier	\$7,500.
(9) 12 U.S.C. 1786(k)(2)(B)	Second tier	\$37,500.
(10) 12 U.S.C. 1786(k)(2)(C)	Third tier	For a person other than an insured credit union: \$1,375,000; For an insured credit union: \$1,375,000 or 1 percent of the total assets of the credit union, whichever is less.
(11) 42 U.S.C. 4012a(f)	Per violation	\$385.
	Per calendar year	\$130,000.

(b) The adjustments displayed in paragraph (a) of this section apply to acts occurring after the date of publication in the **Federal Register**.

[FR Doc. E9–4608 Filed 3–3–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0258; FRL–8401–6]

Dimethomorph; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of dimethomorph in or on ginseng and turnip, greens. Additionally, it establishes tolerances with regional registrations in or on beans, lima, succulent and grape. This regulation also deletes the existing grape import tolerance, as a regional tolerance supersedes it. Finally, it increases the existing tolerance level for potato, wet peel and re-establishes the tolerance for potato. The Interregional Research

Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or before May 4, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0258. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–

4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: nollen.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).