

## CASH MANAGEMENT POLICIES AND PROCEDURES HANDBOOK

### APPENDIX J. CIVIL MONETARY PENALTIES

#### Section 1.0 Purpose

This appendix establishes Department of Commerce policies and procedures for maintaining Civil Monetary Penalties (CMPs) records.

#### Section 2.0 Background

On November 2, 2015, the President signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“the 2015 Act”), which was included as Section 701 of the Bipartisan Budget Act of 2015. The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

The 2015 Act requires agencies to: (1) adjust the level of civil monetary penalties with an initial "catch-up" adjustment for inflation through an interim final rulemaking (IPR); and (2) make subsequent annual adjustments for inflation.

The 2015 Act does not alter existing agency authorities to adjust penalties. Additionally, future penalties or penalty adjustments for inflation enacted by statute or regulation will not be adjusted for inflation in the first year those penalty levels are in effect.

Agencies are responsible for identifying the civil monetary penalties that fall under the statutes and regulations they enforce. The Inflation Adjustment Act defines “civil monetary penalty” as “any penalty, fine, or other sanction that— (A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.”

Agencies are to adjust “the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment.” Therefore, a civil monetary penalty is any monetary assessment levied for a violation of a Federal civil statute or regulation, assessed or enforceable through a civil action in Federal court or an administrative proceeding. This does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory reviews. Furthermore, the adjustment will apply only to penalties with a dollar amount, and will not apply to penalties written as functions of violations. For example, a penalty written, “the penalty shall be the full cost of restoration and repair of archaeological resources damaged” will not be subject to adjustment. In the case of a penalty with only some dollar amounts, e.g., “the penalty shall be the maximum of either twice the value of the transaction or \$250,000,” only the dollar figure, in this case \$250,000, will be subject to adjustment.

### Section 3.0 Reporting Requirements.

The Department's Office of Financial Management (OFM) periodically (at least annually) collects from the bureaus and maintains data on the Department's CMPs, including, but not limited to:

- a. Name or brief description of the penalty;
- b. Public Law or statute citation under which the penalty is defined;
- c. Year the statute authorizing the penalty was enacted;
- d. Last year modified; and
- e. CMP dollar amount (could be set amount, minimum, maximum, minimum/maximum etc.).

Office of Management and Budget (OMB) Circular A-136, *Financial Reporting Requirements*, directs agencies to identify in the Department's annual Agency Financial Report the affected CMPs, the applicable statutes and regulations, and the corresponding dates and amounts of adjustments for inflation.

### Section 4.0 Annual Adjustments for Inflation to CMPs

Annual inflation adjustments to CMPs will be based on the percent change between the October Consumer Price Index for All Urban Consumers (CPI-U) preceding the date of the adjustment, and the prior year's October CPI-U. OMB will issue adjustment rate guidance no later than December 15 for each year, to adjust for inflation in the CPI-U as of the most recent October. Agencies are required to publish annual inflation adjustments to CMPs in the Federal Register no later than January 15, starting in 2017, and each subsequent year.

### Section 5.0 Publication

Adjusted annual CMP levels are published in the Federal Register and the Department's annual Agency Financial Report. The Department's CMPs information can also be accessed through OFM's Publications webpage at [http://osec.doc.gov/ofm/OFM\\_Publications.html](http://osec.doc.gov/ofm/OFM_Publications.html).