DEPARTMENT OF THE TREASURY

31 CFR Part 50

Office of Foreign Assets Control

31 CFR Parts 501, 535, 536, 538, 539, 541, 542, 543, 544, 546, 547, 548, 549, 560, 561, 566, 576, 588, 592, 594, 595, 597, and 598

Financial Crimes Enforcement Network

31 CFR Part 1010

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Departmental Offices, Financial Crimes Enforcement Network, and Office of Foreign Assets Control, Treasury.

ACTION: 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”). This rule adjusts CMPs within the jurisdiction of certain components of the Department to the maximum amount required by the Act.


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, notwithstanding 5 U.S.C. 553. The Department’s initial catch-up adjustment interim final rules were published on June 30, 2016 (FinCEN) (81 FR 43070), and December 7, 2016 (Departmental Offices) (81 FR 88600). 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

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–17–11, the adjustment multiplier for 2017 is 1.01636. In order to complete the 2017 annual adjustment, each CMP (as revised by the catch-up adjustment) is multiplied by the 2017 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of $1.

Procedural Matters

1. Administrative Procedure Act

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding 5 U.S.C. 553. Additionally, the methodology used, effective 2017, 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 and an opportunity for public comment 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

31 CFR Part 50

Insurance, Terrorism.
1010 of title 31 of the Code of Federal Regulations are amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

1. The authority citation for part 50 continues to read as follows:


2. Revise § 50.83(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 $1,333,312 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.

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

3. The authority citation for part 501 continues to read as follows:


Subpart D—Trading With the Enemy Act (TWEA) Penalties

4. Revise the note to paragraph (a)(1) and paragraph (a)(3) of § 501.701 to read as follows:

§ 501.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, TWEA provides for a maximum civil penalty not to exceed $85,236.

* * * * *

(3) The Secretary of the Treasury may impose a civil penalty of not more than $85,236 per violation on any person who violates any license, order, or regulation issued under TWEA.


* * * * *

5. Revise paragraphs (i) and (ii) and the note to paragraph (a) of section V.B.2.a of appendix A to part 501 to read as follows:

Appendix A to Part 501—Economic Sanctions Enforcement Guidelines

V. Civil Penalties

* * *

B. * * *

2. * * *

a. * * *

i. In a non-egregious case, if the apparent violation is disclosed through a voluntary self-disclosure by the Subject Person, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be one-half of the transaction value, capped at a maximum base amount of $144,619 per violation, except where the statutory maximum penalty applicable to the apparent violation is less than $289,238, in which case the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be capped at one-half the statutory maximum penalty applicable to the apparent violation.

ii. In a non-egregious case, if the apparent violation comes to OFAC’s attention by means other than a voluntary self-disclosure, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be the “applicable schedule amount,” as defined above. For apparent violations where the statutory maximum penalty applicable to the apparent violation is less than $289,238, the maximum base amount shall be capped at $289,238. For apparent violations where the statutory maximum penalty applicable to the apparent violation is greater than $289,238, the maximum base amount shall be capped at the statutory maximum penalty amount applicable to the apparent violation.

* * * * *

Note to paragraph (a): As of January 15, 2017, the applicable statutory maximum civil penalty per violation for each statute enforced by OFAC is as follows: International Emergency Economic Powers Act (IEEPA)—greater of $289,238 or twice the amount of the underlying transaction; Trading with the Enemy Act (TWEA)—$85,236; Foreign Narcotics Kingpin Designation Act (FNKDA)—$1,437,153; Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)—greater of $76,351 or twice the amount of which a financial institution was required to retain possession or control; and Clean Diamond Trade Act (CDTA)—$13,066. The civil penalty amounts authorized under these statutes are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

The following matrix represents the base amount of the proposed civil penalty for each category of violation:

<table>
<thead>
<tr>
<th>Category</th>
<th>Base Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>IEEPA</td>
<td>$289,238</td>
</tr>
<tr>
<td>TWEA</td>
<td>$85,236</td>
</tr>
<tr>
<td>FNKDA</td>
<td>$1,437,153</td>
</tr>
<tr>
<td>AEDPA</td>
<td>$76,351</td>
</tr>
<tr>
<td>CDTA</td>
<td>$13,066</td>
</tr>
</tbody>
</table>
**BASE PENALTY MATRIX**

**Egregious Case**

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td><strong>One-Half of Transaction Value</strong>&lt;br&gt;(capped at lesser of $144,619 or one-half of the applicable statutory maximum per violation )</td>
<td><strong>Applicable Schedule Amount</strong>&lt;br&gt;(capped at lesser of $289,238 or the applicable statutory maximum per violation)</td>
</tr>
<tr>
<td>(3)</td>
<td>(4)</td>
</tr>
<tr>
<td><strong>One-Half of Applicable Statutory Maximum</strong></td>
<td><strong>Applicable Statutory Maximum</strong></td>
</tr>
</tbody>
</table>

**PART 535—IRANIAN ASSETS CONTROL REGULATIONS**

6. The authority citation for part 535 continues to read as follows:


Subpart G—Penalties

7. Revise the note to paragraph (a)(1) of § 535.701 to read as follows:

§ 535.701 Penalties.<br>(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of the Act is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

**PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS**

8. The authority citation for part 536 continues to read as follows:


Subpart G—Penalties

9. Revise the note to paragraph (a)(1) of § 536.701 to read as follows:

§ 536.701 Penalties.<br>(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of the Act is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

**PART 538—SUDANESE SANCTIONS REGULATIONS**

10. The authority citation for part 538 continues to read as follows:


Subpart G—Penalties

11. Revise the note to paragraph (a)(1) of § 538.701 to read as follows:

§ 538.701 Penalties.<br>(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of the Act is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *
PART 539—WEAPONS OF MASS DESTRUCTION TRADE CONTROL REGULATIONS

12. The authority citation for part 539 continues to read as follows:

121 Stat. 1011; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR

Subpart G—Penalties

13. Revise the note to paragraph (a)(1) of § 539.701 to read as follows:

§ 539.701 Penalties.

(a) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable
maximum civil penalty per violation of IEEPA is the greater of $289,238 or an
amount that is twice the amount of the transaction that is the basis of the
violation with respect to which the penalty is imposed.

* * * * *

PART 541—ZIMBABWE SANCTIONS REGULATIONS

14. The authority citation for part 541 continues to read as follows:

1705 note); E.O. 13288, 68 FR 11457, 3 CFR, 2003 Comp., p. 186; E.O. 13391, 70 FR 71201,

Subpart G—Penalties

15. Revise the note to paragraph (a)(1) of § 541.701 to read as follows:

§ 541.701 Penalties.

(a) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable
maximum civil penalty per violation of IEEPA is the greater of $289,238 or an
amount that is twice the amount of the transaction that is the basis of the
violation with respect to which the penalty is imposed.

* * * * *

PART 542—SYRIAN SANCTIONS REGULATIONS

16. The authority citation for part 542 continues to read as follows:

168; E.O. 13399, 71 FR 25059, 3 CFR, 2006 Comp., p. 218; E.O. 13460, 73 FR 8991, 3 CFR

Subpart G—Penalties

17. Revise the note to paragraph (a)(1) of § 542.701 to read as follows:

§ 542.701 Penalties.

(a) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable
maximum civil penalty per violation of IEEPA is the greater of $289,238 or an
amount that is twice the amount of the transaction that is the basis of the
violation with respect to which the penalty is imposed.

* * * * *

PART 543—COTE D’IVOIRE SANCTIONS REGULATIONS

18. The authority citation for part 543 continues to read as follows:


Subpart G—Penalties

19. Revise the note to paragraph (a)(1) of § 543.701 to read as follows:

§ 543.701 Penalties.

(a) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable
maximum civil penalty per violation of IEEPA is the greater of $289,238 or an
amount that is twice the amount of the transaction that is the basis of the
violation with respect to which the penalty is imposed.

* * * * *

PART 544—WEAPONS OF MASS DESTRUCTION PROLIFERATORS SANCTIONS REGULATIONS

20. The authority citation for part 544 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Public Law

Subpart G—Penalties

21. Revise the note to paragraph (a)(1) of § 544.701 to read as follows:

§ 544.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable
maximum civil penalty per violation of IEEPA is the greater of $289,238 or an
amount that is twice the amount of the transaction that is the basis of the
violation with respect to which the penalty is imposed.

* * * * *

PART 545—DARFUR SANCTIONS REGULATIONS

22. The authority citation for part 545 continues to read as follows:


Subpart G—Penalties

23. Revise the note to paragraph (a)(1) of § 546.701 to read as follows:

§ 546.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable
maximum civil penalty per violation of IEEPA is the greater of $289,238 or an
amount that is twice the amount of the transaction that is the basis of the
violation with respect to which the penalty is imposed.

* * * * *

PART 546—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

24. The authority citation for part 546 continues to read as follows:


Subpart G—Penalties

25. Revise the note to paragraph (a)(1) of § 547.701 to read as follows:
§ 547.701 Penalties.
(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of IEEPA is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 548—BELARUS SANCTIONS REGULATIONS

26. The authority citation for part 548 continues to read as follows:

Subpart G—Penalties

27. Revise the note to paragraph (a)(1) of § 548.701 to read as follows:
§ 548.701 Penalties.
(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of IEEPA is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

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PART 549—LEBANON SANCTIONS REGULATIONS

28. The authority citation for part 549 continues to read as follows:

Subpart G—Penalties

29. Revise the note to paragraph (a)(1) of § 549.701 to read as follows:
§ 549.701 Penalties.
(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of IEEPA is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 550—IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS

30. The authority citation for part 550 continues to read as follows:

Subpart G—Penalties

31. Revise the note to paragraph (a)(1) of § 560.701 to read as follows:
§ 560.701 Penalties.
(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of IEEPA is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 551—IRANIAN FINANCIAL SANCTIONS REGULATIONS

32. The authority citation for part 551 continues to read as follows:

Subpart G—Penalties

33. Revise the note to paragraph (a)(1) of § 561.701 to read as follows:
§ 561.701 Penalties.
(a) * * *

Note to paragraph (a): As of January 15, 2017, the applicable maximum civil penalty per violation of IEEPA is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 556—HIZBALLAH FINANCIAL SANCTIONS REGULATIONS

34. The authority citation for part 556 continues to read as follows:

Subpart G—Penalties

35. Revise the note to paragraph (a) of § 566.701 to read as follows:
§ 566.701 Penalties.
(a) * * *

Note to paragraph (a): As of January 15, 2017, the applicable maximum civil penalty per violation of IEEPA is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 576—IRAQ STABILIZATION AND INSURGENCY SANCTIONS REGULATIONS

36. The authority citation for part 576 continues to read as follows:

Subpart G—Penalties

37. Revise the note to paragraph (a)(1) of § 576.701 to read as follows:
§ 576.701 Penalties.
(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of IEEPA is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *
PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

38. The authority citation for part 588 continues to read as follows:


Subpart G—Penalties

39. Revise the note to paragraph (a)(1) of § 588.701 to read as follows:

§ 588.701 Penalties.

(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of the Act is $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 592—ROUGH DIAMONDS CONTROL REGULATIONS

40. The authority citation for part 592 continues to read as follows:


Subpart F—Penalties

41. Revise the note to paragraph (a)(1) of § 592.601 to read as follows:

§ 592.601 Penalties.

(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of the Act is $13,066.

* * * * *

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

42. The authority citation for part 594 continues to read as follows:


Subpart G—Penalties

43. Revise the note to paragraph (a)(1) of § 594.701 to read as follows:

§ 594.701 Penalties.

(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of the Act is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 595—TERRORISM SANCTIONS ORGANIZATIONS SANCTIONS REGULATIONS

44. The authority citation for part 595 continues to read as follows:


Subpart G—Penalties

45. Revise the note to paragraph (a)(1) of § 595.701 to read as follows:

§ 595.701 Penalties.

(a) * * *
(1) * * *

Note to paragraph (a)(1): As of January 15, 2017, the applicable maximum civil penalty per violation of the Act is the greater of $289,238 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 597—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

46. The authority citation for part 597 continues to read as follows:


Subpart G—Penalties

47. Revise the note to paragraph (b) of § 597.701 to read as follows:

§ 597.701 Penalties.

* * * * *
(b) * * *

Note to paragraph (b): As of January 15, 2017, the applicable maximum civil penalty per violation is $76,351 or twice the amount of which a financial institution was required to retain possession or control.

* * * * *

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

48. The authority citation for part 598 continues to read as follows:


Subpart G—Penalties

49. Revise the note to paragraph (a)(3) of § 598.701 to read as follows:

§ 598.701 Penalties.

(a) * * *
(3) * * *

Note to paragraph (a)(3): As of January 15, 2017, the maximum civil penalty is $1,437,153 per violation.

* * * * *

PART 1010—GENERAL PROVISIONS

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


51. Amend § 1010.821 by revising Table 1 of paragraph (b) to read as follows:

§ 1010.821 Penalty adjustment and table.

(b) * * *
<table>
<thead>
<tr>
<th>U.S. Code citation</th>
<th>Civil monetary penalty description</th>
<th>New maximum penalty amounts or range of minimum and maximum penalty amounts for penalties assessed after 8/1/2016 but before 1/16/2017</th>
<th>New maximum penalty amounts or range of minimum and maximum penalty amounts for penalties assessed after 1/15/2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 U.S.C. 1829b(j)</td>
<td>Relating to Recordkeeping Violations For Funds Transfers.</td>
<td>$10,000</td>
<td>$19,787 $20,111</td>
</tr>
<tr>
<td>12 U.S.C. 1955</td>
<td>Willful or Grossly Negligent Recordkeeping Violations.</td>
<td>10,000</td>
<td>19,787 20,111</td>
</tr>
<tr>
<td>31 U.S.C. 5318(k)(3)(C)</td>
<td>Failure to Terminate Correspondent Relationship with Foreign Bank.</td>
<td>10,000</td>
<td>13,384 13,603</td>
</tr>
<tr>
<td>31 U.S.C. 5321(a)(5)(C)</td>
<td>Foreign Financial Agency Transaction—Willful Violation of Transaction.</td>
<td>100,000</td>
<td>124,588 126,626</td>
</tr>
<tr>
<td>31 U.S.C. 5321(a)(6)(A)</td>
<td>Negligent Violation by Financial Institution or Non-Financial Trade or Business.</td>
<td>500</td>
<td>1,078 1,096</td>
</tr>
<tr>
<td>31 U.S.C. 5321(a)(6)(B)</td>
<td>Pattern of Negligent Activity by Financial Institution or Non-Financial Trade or Business.</td>
<td>50,000</td>
<td>83,864 85,236</td>
</tr>
<tr>
<td>31 U.S.C. 5321(a)(7)</td>
<td>Violation of Certain Due Diligence Requirements, Prohibition on Correspondent Accounts for Shell Banks, and Special Measures.</td>
<td>1,000,000</td>
<td>1,338,420 1,360,317</td>
</tr>
<tr>
<td>31 U.S.C. 5330(e)</td>
<td>Civil Penalty for Failure to Register as Money Transmitting Business.</td>
<td>5,000</td>
<td>7,954 8,084</td>
</tr>
</tbody>
</table>

David R. Pearl,
Executive Secretary.
[FR Doc. 2017–01637 Filed 2–9–17; 8:45 am]