



COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

RIN 3038-AE51

Annual Adjustment of Civil Monetary Penalties for Inflation - 2017

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its rule that governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the Commodity Exchange Act (CEA) and Commission rules, regulations and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

DATES: *Effective Date:* This interim final rule is effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Edward J. Riccobene, Associate Chief Counsel, Division of Enforcement, at (202) 418-5327 or ericcobene@cftc.gov, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA)¹ requires the head of each Federal agency to periodically adjust for inflation the minimum and maximum amount of CMPs provided by law within the jurisdiction of that agency.² A 2015 amendment to the FCPIAA³ required agencies to make an initial “catch-up” adjustment to its civil monetary penalties effective no later than August 1, 2016.⁴ For every year thereafter effective not later than January 15, the FCPIAA, as amended, requires agencies to make annual adjustments for inflation, with guidance from the Director of the Office of Management and Budget.⁵

II. Commodity Exchange Act Civil Monetary Penalties

The CEA provides for CMPs that meet the FCPIAA definition⁶ and these CMPs are, therefore, subject to the inflation adjustment in the following instances: Sections 6(c), 6(d), 6b, and 6c of the CEA.⁷

¹ The FCPIAA, Pub. L. 101-410 (1990), as amended, is codified at 28 U.S.C. 2461 note. The FCPIAA states that the purpose of the act is to establish a mechanism that (1) allows for regular adjustment for inflation of civil monetary penalties; (2) maintains the deterrent effect of civil monetary penalties and promote compliance with the law; and (3) improves the collection by the Federal Government of civil monetary penalties.

² For the relevant CMPs within the Commission’s jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules, regulations and orders promulgated thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

³ Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 2015 Act, Public Law 114-74, 129 Stat. 584 (2015), title VII, Section 701.

⁴ FCPIAA Sections 4 and 5. See also, Adjustment of Civil Monetary Penalties for Inflation, 81 FR 41435 (June 27, 2016) (to be codified at 17 CFR 143.8).

⁵ FCPIAA Sections 4 and 5. See also, Executive Office of the President, Office of Management and Budget Memorandum, M-17-11, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 16, 2016) available at https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.

⁶ FCPIAA Section 3(2).

⁷ 7 U.S.C. 9, 13a, 13a-1, 13b.

Section 6(c) of the CEA⁸, as adjusted by the FCPIAA⁹, currently sets the maximum CMP that may be imposed by the Commission, in a proceeding initiated on or after August 1, 2016, on “any person (other than a registered entity)” for: (1) each violation of Section 6(c) of the CEA or any other provisions of the Act or of the rules, regulations, or orders of the Commission thereunder to the greater of \$152,243 or triple the monetary gain to the violator; and (2) any manipulation or attempted manipulation in violation of Section 6(c) or 9(a)(2) of the CEA to the greater of \$1,098,190 or triple the monetary gain to the violator.

Section 6(d) of the CEA¹⁰, as adjusted by the FCPIAA¹¹, currently sets the maximum CMP that may be imposed by the Commission, in a proceeding initiated on or after August 1, 2016, on “any person (other than a registered entity)”¹² for violations of the CEA or any other provisions of the CEA or of the rules, regulations, or orders of the Commission thereunder to the greater of \$152,243 or triple the monetary gain to the violator.

Section 6b of the CEA¹³ provides that the Commission, in an administrative proceeding, may impose a CMP on: (1) any registered entity for not enforcing or has not

⁸ 7 U.S.C. 9.

⁹ See 17 CFR 143.8(a)(1)(ii).

¹⁰ 7 U.S.C. 13b.

¹¹ See 17 CFR 143.8(a)(2)(ii).

¹² The term “registered entity” is a defined term under the CEA. Section 1a(40) provides that the term “registered entity” means (A) a board of trade designated as a contract market under section 7 of the act; (B) a derivatives clearing organization registered under section 7a–1 of this act; (C) a board of trade designated as a contract market under section 7b–1 of the act; (D) a swap execution facility registered under section 7b–3 of this title; (E) a swap data repository registered under section 24a of the act; and (F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded. 7 U.S.C. 1a(40).

¹³ 7 U.S.C. 13a.

enforced its rules of government made a condition of its designation or registration as set forth in the CEA, or (2) any registered entity, or any director, officer, agent, or employee of any registered entity, for violations of the CEA or any rules, regulations, or orders of the Commission thereunder. In actions initiated on or after August 1, 2016, for each violation for which a CMP is assessed pursuant to Section 6b, the current, FCPIAA-adjusted maximum penalty is set at: the greater of \$1,098,190 or triple the monetary gain to such person for manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the CEA; and the greater of \$838,640 or triple the monetary gain to such person for all other violations.¹⁴

Section 6c of the CEA¹⁵ provides that Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States and the court may impose on a CMP on “any registered entity or other person” found by the court to have committed any violation of any provision of the CEA or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery or any swap. In actions initiated on or after August 1, 2016, for each violation for which a CMP is assessed pursuant to Section 6c(d), the current, FCPIAA-adjusted maximum penalty is set at: the greater of \$1,098,190 or triple the monetary gain to such person for manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the CEA; and the greater of \$167,728 or triple the monetary gain to such person for all other violations.¹⁶

III. Annual Inflation Adjustment for Commodity Exchange Act Civil Monetary

Penalties

¹⁴ 17 CFR 143.8(a)(3)(ii).

¹⁵ 7 U.S.C. 13a-1.

¹⁶ 17 CFR 143.8(a)(4)(ii).

A. Methodology

The annual inflation adjustment under the FCPIAA, in the context of the CFTC’s CMPs, is determined by increasing the maximum penalty by a “cost-of-living adjustment,” rounded to the nearest multiple of one dollar.¹⁷ Annual inflation adjustments are 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.¹⁸ In this case, October 2016 CPI-U (241.729)/October 2015 CPI-U (237.838) = 1.01636.¹⁹ In order to complete the 2017 annual adjustment, the CFTC must multiply each of its most recent CMP amounts by the multiplier, 1.01636, and round to the nearest dollar.

B. Civil Monetary Penalty Adjustments

Applying the FCPIAA annual inflation adjustment methodology results in the following amended CMPs:

Citation	Description	Current Inflation Adjusted CMP Amount	2017 Annual Inflation Adjusted CMP Amount
Section 6(c) of the CEA, 7 U.S.C. 9	Prohibition Regarding Manipulation and False Information [Other Violation (Non-Manipulation)]	\$152,243	\$154,734
Section 6(c) of the CEA, 7 U.S.C. 9	Prohibition Regarding Manipulation and False Information [Manipulation or	\$1,098,190	\$1,116,156

¹⁷ FCPIAA Sections 4 and 5.

¹⁸ FCPIAA Section 5(b)(1).

¹⁹ The CPI-U is published by the Department of Labor. Interested parties may find the relevant Consumer Price Index on the Internet. To access this information, go to the Consumer Price Index Home Page at: <http://www.bls.gov/cpi/>. Under the “CPI Databases” heading, select “All Urban Consumers (Current Series)”, “Top Picks.” Then check the box for “U.S. All items, 1982-84=100 - CUUR000SA0”, and click the “Retrieve data” button.

	Attempted Manipulation]		
Section 6(d) of the CEA, 7 U.S.C. 13b	Manipulations or Other Violations; Cease and Desist Orders Against Persons Other Than Registered Entities; Punishment; Misdemeanor or Felony; Separate Offenses	\$152,243	\$154,734
Section 6b of the CEA, 7 U.S.C. 13a	Nonenforcement of Rules of Government or Other Violations; Cease and Desist Orders; Fines and Penalties; Imprisonment; Misdemeanor; Separate Offenses [Other Violation (Non-Manipulation)]	\$838,640	\$852,360
Section 6b of the CEA, 7 U.S.C. 13a	Nonenforcement of Rules of Government or Other Violations; Cease and Desist Orders; Fines and Penalties; Imprisonment; Misdemeanor; Separate Offenses [Manipulation or Attempted Manipulation]	\$1,098,190	\$1,116,156
Section 6c of the CEA, 7 U.S.C. 13a-1	Enjoining or Restraining Violations [Other Violation (Non-Manipulation)]	\$167,728	\$170,472
Section 6c of the CEA, 7 U.S.C. 13a-1	Enjoining or Restraining Violations [Manipulation or Attempted Manipulation]	\$1,098,190	\$1,116,156

The FCPIAA provides that any increase under [the FCPIAA] in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.²⁰ Thus, the new CMP amounts established by this rulemaking may be applied only in Commission administrative or civil injunctive enforcement proceedings that are initiated on or after the effective date of this amendment, January 15, 2017.

IV. Administrative Compliance

A. Notice Requirement

²⁰ FCPIAA Section 6.

The notice and comment procedures of 5 U.S.C. 553 do not apply to this rulemaking because the Commission is acting herein pursuant to statutory language which mandates that the Commission act in a nondiscretionary matter. Lake Carriers' Ass'n v. E.P.A., 652 F.3d 1, 10 (D.C. Cir. 2011).²¹

B. Regulatory Flexibility Act

The Regulatory Flexibility Act²² requires agencies with rulemaking authority to consider the impact of certain of their rules on small businesses. A regulatory flexibility analysis is only required for rules for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) or any other law. Because the Commission is not obligated by section 553(b) or any other law to publish a general notice of proposed rulemaking with respect to the revisions being made to regulation 143.8, the Commission additionally is not obligated to conduct a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)²³, which imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. This rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

D. Consideration of Costs and Benefits

²¹ The Commission has determined that the amendment to rule 143.8 is exempt from the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of proposed rulemaking and provide other opportunities for public participation, but excludes rules of agency practice, such as those found in part 143 of the Commission's regulations, and in particular rule 143.8 being revised herein.

²² 5 U.S.C. 601-612.

²³ 44 U.S.C. 3507(d).

Section 15(a) of the CEA²⁴ requires the Commission to consider the costs and benefits of its action before issuing a new regulation. Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission believes that benefits of this rulemaking greatly outweigh the costs, if any. As the Commission understands, the statutory provisions by which it is making cost-of-living adjustments to the CMPs in regulation 143.8 were enacted to ensure that CMPs do not lose their deterrence value because of inflation. An analysis of the costs and benefits of these adjustments were made before enactment of the statutory provisions under which the Commission is operating, and limit the discretion of the Commission to the extent that there are no regulatory choices the Commission could make that would supersede the pre-enactment analysis with respect to the five factors enumerated in section 15(a), or any other factors.

List of Subjects in 17 CFR Part 143

Civil monetary penalties, Claims.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends part 17 CFR part 143 as follows:

PART 143--COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority citation for part 143 continues to read as follows:

²⁴ 7 U.S.C. 19(a).

Authority: 7 U.S.C. 9, 15, 9a, 12a(5), 13a, 13a-1(d), 13(a), 13b; 31 U.S.C. 3701-3720E; 28 U.S.C. 2461 note.

2. Amend § 143.8 as follows:

a. Revise paragraphs (a)(1)(ii) introductory text, (a)(2)(ii), (a)(3)(ii) introductory text, and (a)(4)(ii) introductory text; and

b. Add paragraphs (a)(1)(iii), (a)(2)(iii), (a)(3)(iii), and (a)(4)(iii).

The revisions and additions read as follows:

§ 143.8 Inflation-adjusted civil monetary penalties.

(a) * * *

(1) * * *

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on August 1, 2016 through January 14, 2017:

* * * * *

(iii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on or after January 15, 2017:

(A) For manipulation or attempted manipulation violations, not more than the greater of \$1,116,156 or triple the monetary gain to such person for each such violation; and

(B) For all other violations, not more than the greater of \$154,734 or triple the monetary gain to such person for each such violation; and

(2) * * *

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on August 1, 2016 through January 14, 2017, not more than the greater of \$152,243 or triple the monetary gain to such person for each such violation;

(iii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on or after January 15, 2017, not more than the greater of \$154,734 or triple the monetary gain to such person for each such violation; and

(3) * * *

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on August 1, 2016 through January 14, 2017:

* * * * *

(iii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on or after January 15, 2017:

(A) For manipulation or attempted manipulation violations, not more than the greater of \$1,116,156 or triple the monetary gain to such person for each such violation; and

(B) For all other violations, not more than the greater of \$852,360 or triple the monetary gain to such person for each such violation; and

(4) * * *

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on August 1, 2016 through January 14, 2017:

* * * * *

(iii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on or after January 15, 2017:

(A) For manipulation or attempted manipulation violations, not more than the greater of \$1,116,156 or triple the monetary gain to such person for each such violation; and

(B) For all other violations, not more than the greater of \$170,472 or triple the monetary gain to such person for each such violation.

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Issued in Washington, DC on January 6, 2017, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Adjustment of Civil Monetary Penalties for Inflation - 2017—

Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

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