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DEPARTMENT OF HOMELAND SECURITY

[CIS No. 2585-16]

RIN 1615-AC10

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 503

RIN 1235-AA16

**Department of Homeland Security and Department of Labor Federal Civil Penalties
Inflation Adjustment Act Annual Adjustments for the H-2B Temporary Non-
agricultural Worker Program**

AGENCY: Department of Homeland Security; Wage and Hour Division, Department of Labor.

ACTION: Final rule.

SUMMARY: The U.S. Department of Homeland Security (DHS) and the U.S. Department of Labor (DOL) (collectively, “the Departments”) are jointly issuing this final rule to adjust for inflation the civil monetary penalties assessed or enforced in connection with the employment of temporary nonimmigrant workers under the H-2B program, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). The Inflation Adjustment Act provides that agencies

shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act (APA). Additionally, the Inflation Adjustment Act provides a cost-of-living formula for adjustment of the civil penalties. Accordingly, this final rule sets forth the Departments' 2017 annual adjustments for inflation to the H-2B civil monetary penalties, effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Pamela Peters, Program Analyst, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone: (202) 693-5959 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693-5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1-877-889-5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Regulatory Information

The Inflation Adjustment Act required agencies to: (1) adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation. Agencies are required to publish an annual inflation adjustment no later than January 15, 2017, and by January 15 of each subsequent year.

On July 1, 2016, the Departments established the initial catch-up adjustment for civil monetary penalties assessed or enforced in connection with the employment of temporary nonimmigrant workers under the H-2B program. See 81 FR 42983 (IFR).¹ This final rule reflects that the Departments did not receive any public comments on the jointly-issued IFR and so did not make any changes to the civil monetary penalty amounts established in the IFR based on comments received. For that reason, this rule is being issued jointly by DOL and DHS. As explained in the IFR, DOL will make future adjustments to the H-2B civil monetary penalties consistent with DOL's delegated authority under 8 U.S.C. 1184(c)(14), Immigration and Nationality Act section 214(c)(14), and the Inflation Adjustment Act. See 81 FR 42985 n.2. DOL will make the first such adjustment in 2018.

Agencies are required to calculate the annual adjustment based on the Consumer Price Index for all Urban Consumers (CPI-U). Annual inflation adjustments are based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year's October CPI-U; in this case, the percent change between the October 2016 CPI-U and the October 2015 CPI-U. The cost-of-living adjustment multiplier for 2017, based on the Consumer Price Index (CPI-U) for the month of October 2016, not seasonally adjusted, is 1.01636.² In order to complete the 2017 annual adjustment, the Departments multiplied the most recent H-2B maximum civil monetary penalty amounts by the multiplier, 1.01636, and rounded to the nearest dollar.

¹ The Departments incorporate by reference the preamble to the July 2016 IFR. See 81 FR 42983-42986.

² OMB provided the year-over-year multiplier, rounded to 5 decimal points. See 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).

As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after the effective date of this rule. Accordingly, for penalties assessed after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], whose associated violations occurred after November 2, 2015, the higher penalty amounts outlined in this rule will apply. The chart below demonstrates the penalty amounts that apply:

Violations occurring	Penalty assessed	Which penalty level applies
On or before November 2, 2015	On or before August 1, 2016	Pre-August 1, 2016 levels
On or before November 2, 2015	After August 1, 2016	Pre-August 1, 2016 levels
After November 2, 2015	After August 1, 2016, but on or before [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]	August 1, 2016 levels
After November 2, 2015	After [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] levels

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Departments consider the impact of paperwork and other information collection burdens

imposed on the public. The Departments have determined that this final rule does not require any collection of information.

III. Administrative Procedure Act

The Inflation Adjustment Act provides that agencies shall annually adjust civil monetary penalties for inflation notwithstanding Section 553 of the Administrative Procedure Act (APA). Additionally, the Inflation Adjustment Act provides a nondiscretionary clear formula for annual adjustment of the civil monetary penalties. For these reasons, the requirements in sections 553(b), (c), and (d) of the APA, relating to notice and comment and requiring that a rule be effective at least 30 days after publication in the Federal Register, are inapplicable.

IV. Executive Orders 12866: Regulatory Planning and Review; and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a “significant regulatory action” is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of \$100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues.

The Departments have determined that this final rule is not a “significant” regulatory action and a cost-benefit and economic analysis is not required. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the Inflation Adjustment Act, and has no impact on disclosure or compliance

costs. The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the incentive for the regulated community to comply with the laws enforced by the Departments, and not allowing the incentive to be diminished by inflation. To the extent this Final Rule increases civil monetary penalties, it would result in an increase in transfers from persons or entities assessed a civil monetary penalty to the government.

Executive Order 13563 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility to minimize burden.

By mandating inflation adjustments consistent with a non-discretionary, clear formula, Congress has already determined that any possible increase in costs is justified by the overall benefits of such adjustments. This final rule makes only the statutory changes outlined herein; thus there are no alternatives or further analysis required by E.O. 13563.

V. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA, 5 U.S.C. 553(b). This final rule is exempt from the requirements of the APA because the Inflation Adjustment Act directed the Departments

to issue the annual adjustments without regard to Section 553 of the APA. Therefore, the requirements of the RFA applicable to final rules, 5 U.S.C. 604, do not apply to this final rule. Accordingly, the Departments are not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

VI. Environmental Impact Assessment

This action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This action is therefore categorically excluded from further review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4375.

List of Subjects in 29 CFR Part 503

Administrative practice and procedure, Aliens, Employment, Housing, Immigration, Labor, Penalties, Transportation, Wages.

Accordingly, for the reasons set out in the preamble, 29 CFR part 503 is amended as follows:

Title 29-Labor

PART 503—ENFORCEMENT OF OBLIGATIONS FOR TEMPORARY

NONIMMIGRANT NON-AGRICULTURAL WORKERS DESCRIBED IN THE

IMMIGRATION AND NATIONALITY ACT

1. The authority citation for part 503 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 U.S.C. 1184; 8 CFR 214.2(h); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701.

§ 503.23 [Amended]

2. In the table below for § 503.23, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph, and add in its place the dollar amount indicated in the right column:

Paragraph	Remove	Add
(b)	\$11,940	\$12,135
(c)	\$11,940	\$12,135
(d)	\$11,940	\$12,135

John F. Kelly,

Secretary of Homeland Security.

Edward C. Hugler,

Acting Secretary of Labor.

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