

a.1. Using reciprocating engines; or  
a.2. Turbo prop engines with less than 600 horse power (h.p.);  
a.3. T-37 model jet trainer aircraft; and

a.4. Specially designed component parts.

b. Ground transport vehicles (including trailers) and parts and components therefor designed or modified for non-combat military use and unarmed all-wheel drive vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better. (See § 770.2(h)—Interpretation 8).

c. Pressure refuelers, pressure refueling equipment, and equipment specially designed to facilitate operations in confined areas; and ground equipment, n.e.s., developed specially for military aircraft and helicopters, and specially designed parts and accessories, n.e.s.;

d. Pressurized breathing equipment specially designed for use in military aircraft and helicopters;

e. Military parachutes and complete canopies, harnesses, and platforms and electronic release mechanisms therefor, except such types as are in normal sporting use;

f. Military instrument flight trainers, except for combat simulation; and components, parts, attachments and accessories specially designed for such equipment.

Dated: August 25, 2004.

**Peter Lichtenbaum,**

*Assistant Secretary for Export Administration.*

[FR Doc. 04-19872 Filed 8-30-04; 8:45 am]

BILLING CODE 3510-33-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 143

#### RIN 3038-AC13

### Adjustment of Civil Monetary Penalties for Inflation

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is amending its rule which 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 (Act) and Commission rules and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

**EFFECTIVE DATE:** October 23, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Daniel A. Nathan, Chief, Office of Cooperative Enforcement, Division of Enforcement, at (202) 418-5314 or [dnathan@cftc.gov](mailto:dnathan@cftc.gov); Terry S. Arbit, Associate General Counsel, at (202) 418-5357 or [tarbit@cftc.gov](mailto:tarbit@cftc.gov); Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. This document also is available at <http://www.regulations.gov>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA),<sup>1</sup> requires the head of each Federal agency to adjust by regulation, at least once every four years, the maximum amount of CMPs provided by law within the jurisdiction of that agency by the cost-of-living adjustment defined in the FCPIAA, as amended.<sup>2</sup> Because the purposes of the inflation adjustments include maintaining the deterrent effect of CMPs and promoting compliance with the law, the Commission monitors the impact of inflation on its CMP maximums and adjusts them as needed to implement the requirements and purposes of the FCPIAA.<sup>3</sup>

##### II. Relevant Commission CMPs

The inflation adjustment requirement applies to:

[A]ny penalty, fine or other sanction that—

<sup>1</sup> The FCPIAA, Pub. L. 101-410 (1990), and the relevant amendments to the FCPIAA contained in the DCIA, Pub. L. 104-134 (1996), are codified at 28 U.S.C. 2461 note.

<sup>2</sup> The DCIA also requires that the range of minimum and maximum CMPs be adjusted, if applicable. This is not applicable to the Commission because, 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 and orders thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

<sup>3</sup> Specifically, the FCPIAA states:

The purpose of [the FCPIAA] is to establish a mechanism that shall—

(1) Allow for regular adjustment for inflation of civil monetary penalties;

(2) Maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) Improve the collection by the Federal Government of civil monetary penalties.

(A) 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[.]

28 U.S.C. 2661 note. The Act provides for CMPs that meet the above definition, and are therefore subject to the inflation adjustment, in three instances: Sections 6(c), 6b, and 6c of the Act.<sup>4</sup>

Penalties may be assessed in a Commission administrative proceeding pursuant to Section 6(c) of the Act, 7 U.S.C. 9, against “any person” found by the Commission to have:

- (1) Engaged in the manipulation of the price of any commodity, in interstate commerce, or for future delivery;
- (2) Willfully made a false or misleading statement or omitted a material fact in an application or report filed with the Commission; or
- (3) Violated any provision of the Act or the Commission's rules, regulations or orders thereunder.

Penalties may be assessed in a Commission administrative proceeding pursuant to Section 6b of the Act, 7 U.S.C. 13a, against: (1) Any registered entity<sup>5</sup> that the Commission finds is not enforcing or has not enforced its rules, or (2) any registered entity, or any director, officer, agent, or employee of any registered entity, that is violating or has violated any of the provisions of the Act or the Commission's rules, regulations or orders thereunder.

Penalties may be assessed pursuant to Section 6c of the Act, 7 U.S.C. 13a-1, against “any person” found by “the proper district court of the United States” to have committed any violation of any provision of the Act or any rule, regulation or order thereunder.

##### III. Relevant Cost-of-Living Adjustment

The formula for determining the cost-of-living adjustment, first defined by the FCPIAA, and amended by the DCIA, consists of a four-step process.

<sup>4</sup> 7 U.S.C. 9, 13a and 13a-1.

<sup>5</sup> The Commodity Futures Modernization Act of 2000, Appendix E of the Consolidated Appropriations Act of 2000, Pub. L. 106-554, 114 Stat. 2763 (2000) (CFMA), substituted the term “registered entity” for the term “contract market” throughout the Act, including in Section 6b. The CFMA also added a definition of the term “registered entity” in section 1a(29) of the Act, 7 U.S.C. 1a(29) of the Act, 7 U.S.C. 1a(29), which includes designated contract markets, registered derivatives transaction execution facilities, and registered derivatives clearing organizations. The amended Rule 143.8 includes a technical correction substituting the term “registered entity” for the term “contract market” to conform to this change in the Act.

The first step entails determining the inflation adjustment factor. This is done by calculating the percentage increase by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds 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.<sup>6</sup> Accordingly, the inflation adjustment factor for the present adjustment equals the Consumer Price Index for all-urban consumers published by the Department of Labor for June 2003 (*i.e.*, June of the year preceding this year), divided by that index for June 2000.<sup>7</sup>

Once the inflation adjustment factor is determined, it is then multiplied by the current maximum CMP set forth in Rule 143.8 to calculate the raw inflation increase.<sup>8</sup> This raw inflation increase is then rounded according to the guidelines set forth by the FCPIAA.<sup>9</sup> Finally, once the inflation increase has been rounded pursuant to the FCPIAA, it is added to the current CMP maximum to obtain the new CMP maximum penalty.<sup>10</sup> As a result, the

<sup>6</sup> The Consumer Price Index means the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor. Interested parties may find the relevant Consumer Price Index over the Internet. To access this information, go to the Consumer Price Index Home Page at: <http://www.bls.gov/data/>. Under the Prices and Living Conditions Section, select Most Requested Statistics for CPI—All Urban Consumers (Current Series). Then check the box for CPI for U.S. All Items, 1967=100—CUUR0000AA0, and click the Retrieve Data button.

<sup>7</sup> The Consumer Price Index for all-urban consumers published by the Department of Labor for June 2003 was 550.4, and for June 2000 was 516.5. Therefore, the relevant inflation adjustment factor equals 550.4 divided by 516.5. The result is a 6.56 percent increase in the CPI between June 2000 and June 2003. Accordingly, our inflation adjustment factor is 6.56 percent, or 0.0656 for computational purposes.

<sup>8</sup> The current CMP maximum listed in Rule 143.8, as amended in 2000, for purposes of Sections 6(c) and 6c of the Act is \$120,000. The current CMP maximum for purposes of Section 6b of the Act is \$575,000.

Accordingly, the calculations for the raw inflation increase are the following:

Sections 6(c) and 6c:  $(0.0656 \times \$120,000) = \$7,872$   
Section 6b:  $(0.0656 \times \$575,000) = \$37,720$

<sup>9</sup> The FCPIAA, as amended by the DCIA, provides in relevant part that any increase “shall be rounded to the nearest—

(5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) multiple of \$25,000 in the case of penalties greater than \$200,000.”

Accordingly, the raw inflation increase for purposes of Sections 6(c) and 6c of the Act (\$7,872) is rounded to \$10,000, while the raw inflation increase for purposes of Section 6b (\$37,720) is rounded to \$50,000.

<sup>10</sup> For purposes of Sections 6(c) and 6c of the Act, the rounded inflation increase (\$10,000) is added to

maximum, inflation-adjusted CMP for each violation of the Act or Commission rules or orders thereunder assessed against any person pursuant to Sections 6(c) and 6c of the Act will be \$130,000 or triple the monetary gain to such person for each violation, and \$625,000 for each such violation when assessed pursuant to Section 6b of the Act.

The FCPIAA provides that “any increase under [FCPIAA] in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.”<sup>11</sup> Thus, the new CMP maximum may be applied only to violations of the Act that occur after the effective date of this amendment, October 23, 2004.

#### IV. Related Matters

##### A. Notice Requirement

This amendment to Rule 143.8 will implement a statutory change regarding agency procedure or practice within the meaning of 5 U.S.C. 553(b)(3)(A) and therefore does not require notice.<sup>12</sup> The Commission also believes that opportunity for public comment is unnecessary under 5 U.S.C. 553(b)(3)(B). This amendment does not effect any substantive change in Commission rules, nor alter any obligation that a party has under Commission rules, regulations or orders. No party must change its manner of doing business, either with the public or the Commission, to comply with the rule amendment. This change is undertaken pursuant to a statutory requirement that all agencies make such adjustments and is intended to prevent inflation from eroding the deterrent effect of CMPs.

While higher maximum CMPs may expose persons to potentially higher financial liability, in nominal terms, for violations of the Act or Commission rules or orders thereunder, the rule amendment does not require that the

the current CMP maximum (\$120,000), totaling \$130,000. For purposes of Section 6b of the Act, the rounded inflation increase (\$50,000) is added to the current CMP maximum (\$575,000), totaling \$625,000.

<sup>11</sup> See also *Landgraf v. USI Film Products*, 511 U.S. 244 (1994) (holding that there is a presumption against retroactivity in changes to damage remedies or civil penalties in the absence of clear statutory language to the contrary).

<sup>12</sup> U.S.C. 553(b) generally requires notice of proposed rulemaking to be published in the **Federal Register**. That provision states, however, that “[e]xcept when notice or hearing is required by statute, [notice is not required]—

(A) [for] interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

maximum penalty be imposed on any party, nor does it alter any substantive due process rights that a party has in an administrative proceeding or a court of law that protect against imposition of excessive penalties. Further, as previously noted, the rule amendment applies only to violations of the Act or Commission rules or orders that occur after the effective date of this amendment.

##### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The amended rule will potentially affect those persons who are found by the Commission or the Federal courts to have violated the Act or Commission rules or orders. Some of these affected parties could be small businesses. Nevertheless, the Acting Chairman, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

While the Commission recognizes that certain persons assessed a CMP for violating Act or Commission rules or orders may be small businesses, the rule does not mandate the imposition of the maximum CMP set forth in the rule on any party. As is currently the case, the imposition of the maximum CMP will occur only where the administrative law judge, the Commission or a Federal court finds that the gravity of the offense warrants a CMP in that amount.<sup>13</sup>

The rule should not increase in real terms the economic burden of the maximum CMPs set forth in the Act. Instead, the rule implements a statutory requirement that agencies adjust for inflation existing CMPs so that the real economic value of such penalties, and therefore the Congressionally-intended deterrent effect of such CMPs, is not reduced over time by inflation. Nor does the rule impose any new, affirmative duty on any party or change any

<sup>13</sup> Section 6(e) of the Act, 7 U.S.C. 9a(1), directs the Commission to “consider the appropriateness of [a] penalty to the gravity of the violation” when assessing a CMP pursuant to Section 6(c) of the Act. In addition, the Commission’s penalty guidelines state that the Commission, when assessing any CMP, will consider the gravity of the offense in question. In assessing the gravity of an offense, the Community may consider such factors as whether the violations resulted in harm to the victims, whether the violations involved core provisions of the Act, and whether the violator acted intentionally or willfully, as well as other factors. See CFTC Policy Statement Relating to the Commission’s Authority to Impose Civil Money Penalties and Futures Self-Regulatory Organizations’ Authority to Impose Sanction; Penalty Guidelines, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,265 (CFTC Nov. 1994).

existing requirements, and thus no party who is currently complying with the Act and Commission regulations will incur any expense in order to comply with the amended rule. Therefore, the Commission believes that this final rule will not have a significant economic impact on a substantial number of small entities.<sup>14</sup>

### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3507(d), which imposes certain requirements on Federal agencies, including the Commission, connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The Commission believes this rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

### List of Subjects in 17 CFR Part 143

Civil monetary penalty, Claims.

■ In consideration of the foregoing and pursuant to authority contained in Sections 6(c), 6b and 6c of the Act, 7 U.S.C. 9, 13a, and 13a-1(d), and 28 U.S.C. 2461 note as amended by Pub. L. 104-134, the Commission hereby amends part 143 of chapter I of title 17 of the Code of Federal Regulations as follows:

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

■ 1. The authority of citation for part 143 reads as follows:

**Authority:** 7 U.S.C. 9 and 15, 9a, 12a(5), 13a, 13a-1(d) and 13(a); 31 U.S.C. 3701-3719; 28 U.S.C. 2461 note.

■ 2. Section 143.8 is amended by revising paragraph (a) to read as follows:

<sup>14</sup> Any agency that regulates the activities of small entities must establish a policy or program to reduce and, when appropriate, to waive civil penalties for violations of statutory or regulatory requirements by small entities. An agency is not required to reduce or waive civil penalties, however, if: (1) An entity has been the subject of multiple enforcement actions; (2) an entity's violations involve willful or criminal conduct; or (3) the violations involve serious health, safety or environmental threats. See Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. 104-121, § 223, 110 Stat. 862 (March 29, 1996). The Commission takes these provisions of SBREFA into account when it considers whether to seek or impose a civil monetary penalty in a particular case involving a small entity.

### § 143.8 Inflation-adjusted civil monetary penalties.

(a) Unless otherwise amended by an act of Congress, the inflation-adjusted maximum civil monetary penalty for each violation of the Commodity Exchange Act or the rules or orders promulgated thereunder that may be assessed or enforced by the Commission under the Commodity Exchange Act pursuant to an administrative proceeding or a civil action in Federal court will be:

(1) For each violation for which a civil monetary penalty is assessed against any person (other than a registered entity) pursuant to Section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than the greater of \$110,000 or triple the monetary gain to such person for each such violation;

(ii) For violations committed between October 23, 2000 and October 22, 2004, not more than the greater of \$120,000 or triple the monetary gain to such person for each such violation; and

(iii) For violations committed on or after October 23, 2004, not more than the greater of \$130,000 or triple the monetary gain to such person for each such violation;

(2) For each violation for which a civil monetary penalty is assessed against any registered entity or other person pursuant to Section 6c of the Commodity Exchange Act, 7 U.S.C. 13a-1:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than the greater of \$110,000 or triple the monetary gain to such person for each such violation;

(ii) For violations committed between October 23, 2000 and October 22, 2004, not more than the greater of \$120,000 or triple the monetary gain to such person for each such violation; and

(iii) For violations committed on or after October 23, 2004, not more than the greater of \$130,000 or triple the monetary gain to such person for each such violation; and

(3) For each violation for which a civil monetary penalty is assessed against any registered entity or any director, officer, agent, or employee of any registered entity pursuant to Section 6b of the Commodity Exchange Act, 7 U.S.C. 13a:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than \$550,000 for each such violation;

(ii) For violations committed between October 23, 2000 and October 22, 2004, not more than \$575,000 for each such violation; and

(iii) For violations committed on or after October 23, 2004, not more than \$625,000 for each such violation.

\* \* \* \* \*

Issued in Washington, DC on August 24, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 143

RIN 3038-AC03

### Collection of Claims Owed the United States Arising From Activities Under the Commission's Jurisdiction

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of final rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is amending its regulations which govern the collection of claims owed to the United States arising from activities under the Commission's jurisdiction. The amendment implements provisions of the Debt Collection Improvement Act of 1996 (DCIA) that allow Federal agencies to collect past-due debts through administrative wage garnishment. As required by the DCIA, the wage garnishment procedures the Commission is adopting are based on, and are consistent with, implementing regulations that have been issued by the Department of Treasury.

**DATES:** The Commission's amendment of its part 143 regulations shall be effective on August 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Stephen Mihans, Esq., Office of General Counsel, Commodity Futures Trading Commission, at (202) 418-5399 or [smihans@cftc.gov](mailto:smihans@cftc.gov). This document also is available at <http://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:** On December 15, 2003, the Commission published for public comment a proposed revision of part 143 of its regulations, 17 CFR part 143, which would add administrative wage garnishment to the available procedures for collecting debts owed to the United States arising from activities subject to the Commission's jurisdiction.<sup>1</sup> At present, the part 143 rules, which apply to debts owed by persons not employed by the Federal government, authorize

<sup>1</sup> See 68 FR 69634 (Dec. 15, 2003).