

CASH MANAGEMENT POLICIES AND PROCEDURES HANDBOOK

Appendix I - CIVIL MONETARY PENALTIES

Section 1.0 Purpose

Executive branch agencies (as defined under Title 5, U.S.C. Sec. 105) are required to assess and collect penalties. This appendix establishes Department of Commerce policies and procedures for maintaining Civil Monetary Penalties (CMPs) records. The previous annual reporting requirements for Department organization units for CMPs was eliminated by Public Law 105-362, the "Federal Reports Elimination Act of 1998." This appendix further provides for the adjustment for inflation of CMPs *amounts* at least every four years.

Section 2.0 Background

CMPs include non-criminal monetary penalties, fines, or other sanctions assessed by a Federal agency pursuant to Federal law, as a result of an administrative action, proceeding, or a civil action in the Federal courts, and for which Federal law establishes a "specific or maximum dollar value."

Examples of "specific or maximum dollar value" are: "\$5,000 per day,"

"\$20,000 per violation," "ten percent (10%) of the underreported amount, but no more than \$20,000." Civil penalties that are strictly variable or percentage based--without a specific maximum value--are not CMPs.

[The Federal Civil Penalties Inflation Adjustment Act of 1990 \(Public Law 101-410\)](#) provides for the regular evaluation and adjustment of CMPs, for inflation, to ensure that they continue to perform the deterrent role for which they were originally enacted. The Act also focuses on the collection of CMPs to ensure that penalty amounts due to the Federal Government are properly accounted for and collected. In accordance with requirements of the [Debt Collection Improvement Act of 1996](#), inflation adjustments were placed in effect in 1996, with the next adjustment cycle being due in, or before, the year 2000.

CMPs are, as Government receivables, also subject to debt management practices established by the [Debt Collection Improvement Act of 1996](#).

The [Debt Collection Improvement Act of 1996](#) also permits annual inflation adjustment of CMPs outstanding balances as an alternative to charging interest and penalties.

Federal agencies assess and collect CMPs to enforce a wide variety of regulations in areas such as health and safety, transportation safety, environmental hazards, import and export restrictions, land and resource management, tax law enforcement, and lobbying. Also, under provisions of the Program Fraud Civil Remedies Act (PFCRA), the Department's Office of Inspector General has authority to initiate CMPs proceedings against anyone who makes a false claim or written statement to the Federal Government.

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Currently, the following Department of Commerce agencies are authorized to assess certain specific CMPs:

Bureau of Export Administration

Economic Development Administration

Economics and Statistics Administration (ESA)/Census

ESA/Bureau of Economic Analysis

Import Administration

National Oceanic and Atmospheric Administration

* See 15 CFR 6.4

Section 3.0 Civil Monetary Penalties Records and Civil Monetary Penalties Inflation Adjustments Report.

.01 Civil Monetary Penalties Records

While the annual *reporting* requirement has been discontinued, the CMP record-keeping requirement continues unchanged, with the following information to be maintained by organizational units:

- a. The organization unit;
- b. Public Law or statute citation under which the penalty is defined;
- c. A brief description of the penalty;
- d. Number of times the penalty was imposed or assessed;
- e. Dollar value of assessments;
- f. Number of times the penalty was collected; and
- g. Dollar value of collections and any interest.

Penalty assessments refer to the final dollar value of the penalty amount imposed or levied, which is then subject to collection. Penalty collections refer to actual monies collected.

.02 Civil Monetary Penalties Inflation Adjustments Report

In addition to the maintenance of records on penalty assessments and collections, a separate reporting requirement for determining inflation adjustments to CMPs must be prepared. The

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inflation adjustment report is due every four (4) years, with the next report being due in 2000. When preparing the report, organization units shall include:

- a. The organization unit;
- b. The U.S. Code citation under which the penalty is defined;
- c. A brief description of the penalty;
- d. The year the dollar value of the penalty was last set by Federal law;
- e. The maximum dollar value, or if Federal law provides, the minimum and maximum dollar values, of the penalty;
- f. The way in which the penalty amount is applied (per violation, per unit, per specified time period, etc.);
- g. The maximum dollar value, or, if applicable, the minimum and maximum dollar values, after the penalty has been adjusted for inflation (see .03 below); and
- h. The Consumer Price Index value for all urban consumers (CPI-U) for June of the year of enactment or the last modification of the CMP (CPI-U) will be provided to organization units when the Office of Financial Management requests the CMPs inflation adjustment report.

Organization units shall include with the report proposed changes to Federal law that would be necessary to increase each CMPs to the inflation adjusted value.

Modifications submitted must ensure that the modified penalty amount applies only to violations occurring after the enactment of the inflation adjusted penalty.

.03 Method for Determining Inflation Adjustments

a. Inflation Measure

The inflation measure to be used for determining the inflation adjustment for each penalty is the June Consumer Price Index for all-urban consumers (CPI-U), published by the Bureau of Labor Statistics, U.S. Department of Labor. This is a listing of CPI-U index values from 1913 through the present.

b. Adjustments

The appropriate inflation adjustment for each penalty is determined by:

- o Dividing the June present-year CPI-U index value by the CPI-U index value for the month of June of the year in which the penalty was enacted or last modified by Federal law; and
- o Multiplying the resulting value by the maximum amount of each penalty, or, if applicable, the minimum and maximum amount of each penalty.

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c. Rounding

Any increase resulting from the described adjustment will be rounded to the nearest multiple of:

- o \$10, if the adjustment results in a maximum penalty value less than or equal to \$100;
- o \$100, if the adjustment results in a maximum penalty value greater than \$100, but less than or equal to \$1000;
- o \$1,000, if the adjustment results in a maximum penalty value greater than \$1,000, but less than or equal to \$10,000;
- o \$5,000, if the adjustment results in a maximum penalty value greater than \$10,000, but less than or equal to \$100,000;
- o \$10,000, if the adjustment results in a maximum penalty value greater than \$100,000, but less than or equal to \$200,000; and
- o \$25,000, if the adjustment results in a maximum penalty value greater than \$200,000.

Section 4.0 Recommendations Concerning Inflation Adjustments

If an organization unit wishes to recommend that a penalty not be adjusted for inflation, or that a penalty not be adjusted to the full extent, the organization unit should transmit a memorandum to the Director for Financial Management, along with the required report, identifying the specific penalty and the reasons for not implementing the full inflation adjustment. However, the organization unit must still provide the penalty information and inflation adjustment following the reporting instructions and inflation adjustment methods above.