



# RESCINDED

OCC 2004-53

**Subject: Civil Money Penalty Inflation-adjustment Amendment**  
**Date: November 22, 2004**

**To: Chief Executive Officers of All National Banks, Federal Branches and Agencies, Department and Division Heads, and All Examining Personnel**

## Description: Final Rule

This rescission does not change the status of the transmitted document. To determine the current status of the transmitted document, refer to the Code of Federal Regulations, [www.occ.gov](http://www.occ.gov), or the original issuer of the document.

The Inflation Adjustment Act requires the OCC, as well as other federal agencies with CMP authority, to publish regulations to adjust each CMP authorized by law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Inflation Adjustment Act requires the adjustments to be made at least once every four years following the initial adjustment. The OCC's prior adjustment to each CMP was published in the *Federal Register* and became effective on December 11, 2000. The rule revises the table that appears at 12 CFR 19.240. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The final rule also makes a technical correction to correct a numbering error. The final rule amends subpart O by combining sections 19.240 and 19.241 into section 19.240 and removes 19.241 from subpart O. Revised section 19.240 is divided into paragraphs (a) and (b). Former section 19.240 becomes paragraph (a) and former section 19.241 becomes paragraph (b). Section 19.241 in subpart P is unchanged.

For further information, contact Jean Campbell, senior attorney, Legislative and Regulatory Activities Division at (202) 874-5090.

Daniel P. Stipano  
Acting Chief Counsel

## Related Links

- [69 FR 65067](#)

(d) Each shipment must be inspected by the NPPO before export. For each shipment, the NPPO must issue a phytosanitary certificate with an additional declaration stating that the fruit in the shipment was found free from *C. punctiferalis*, *E. ambiguella*, *S. pilleriana*, *S. auriferella*, or *M. fructigena*, and *Nippoptilia vitis*.

(Approved by the Office of Management and Budget under control number 0579-0236)

Done in Washington, DC, this 4th day of November 2004.

**W. Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-25042 Filed 11-9-04; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 19

[Docket No. 04-24]

RIN 1557-AC82

#### Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustments

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustment, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The OCC is also making a technical correction to resolve an error in the numbering of sections in part 19.

**DATES:** *Effective Date:* December 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090, or Carolyn Amundson, Counsel, Enforcement and Compliance Division, (202) 874-4800, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Inflation Adjustment Act (Act), 28 U.S.C. 2461 note, requires the OCC, as well as other Federal agencies with CMP authority, to publish regulations to adjust each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Act requires adjustments to be made at least once every four years following the initial adjustment. The OCC's prior adjustment to each CMP was published in the **Federal Register** on December 11, 2000, 65 FR 77250, and became effective that same day.

The Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the year in which the adjustment will be made and June of the calendar year in which the amount was last set or adjusted. The Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor.<sup>1</sup> See 28 U.S.C. 2461 note. In addition, the Act provides rules for rounding off increases,<sup>2</sup> and requires that any increase in a CMP apply only to violations that occur after the date of the adjustment. Finally, section 2 of the Debt Collection Improvement Act, 28 U.S.C. 2461 note, limited the initial adjustment of a CMP pursuant to the Act to 10 percent of the amount set by statute.

#### Description of the Final Rule

##### *Inflation Adjustment*

This final rule adjusts the amount for each type of CMP that the OCC has jurisdiction to impose in accordance with the statutory requirements by revising the table contained in subpart

<sup>1</sup> The Department of Labor computes the CPI-U using two different base time periods, 1967 and 1982-1984, and the Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC, consistent with the other Federal banking agencies, has used the CPI-U with 1982-84 as the base period.

<sup>2</sup> The Act's rounding rules require that an increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000. See 28 U.S.C. 2461 note.

O of 12 CFR part 19. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The Act requires that we compute the inflation adjustment by comparing the CPI-U for June of the year in which the CMPs were last set or adjusted with the CPI-U for June of the calendar year preceding the adjustment. 28 U.S.C. 2461 note. For those CMPs that were adjusted in 2000, we compared the CPI-U for June 2003 (183.7) with the CPI-U for June 2000 (172.4). This resulted in an inflation adjustment of 6.6 percent. For those penalties that were last adjusted in 1997, we compared the CPI-U for June 1997 (160.3) to the CPI-U for June 2003 (183.7). This resulted in an inflation increase of 14.6 percent. The penalty for failure to require flood insurance or notify the borrower of lack of coverage, 42 U.S.C. 4012a(f)(5), has never been adjusted for inflation because of application of the rounding rules. For that penalty, we compared the CPI-U for June of the year of enactment, 1994<sup>3</sup> (148.0), with the CPI-U for June 2003 (183.7). This resulted in an inflation increase of 24.1 percent.

We multiplied the amount of each CMP by the appropriate percentage inflation adjustment and added that amount to the current penalty. We rounded the resulting dollar amount up or down according to the rounding requirements of the Act. In some cases, rounding resulted in no adjustment to the CMP. In the case of the flood insurance penalty, the increase was capped at 10 percent because this is the initial adjustment. The following table shows both the present CMPs and the inflation adjusted CMPs. The table published in § 19.240(a) is shorter and shows only the adjusted CMPs, not the calculations.

New § 19.240(b) states that the adjustments made in § 19.240(a) apply only to violations that occur after the effective date of this final rule.

The OCC will readjust these amounts in 2008 and every four years thereafter, assuming there are no further changes to the mandate imposed by the Act.

<sup>3</sup> See Riegle Community Development and Regulatory Improvement Act of 1994 (RDCRIA), Pub. L. 103-325, Title V, section 525, 108 Stat. 2260.

U.S. Code citation	Description	Maximum penalty (in dollars)	Percentage increase	Amount of increase (in dollars)	Amount of increase—rounded (in dollars)	Adjusted maximum penalty (in dollars)
12 U.S.C. 93(b), 504, 1817(j)(16), 1818(i)(2), and 1972(2)(F).	Tier 1 .....	5,500	14.6	803	1,000	6,500
	Tier 2 .....	27,500	14.6	4,015	5,000	32,500
	Tier 3 .....	1,175,000	6.6	77,550	75,000	1,250,000
12 U.S.C. 164 and 3110(c)	Tier 1 .....	2,200	6.6	145	0	2,200
	Tier 2 .....	22,000	14.6	3,212	5,000	27,000
	Tier 3 .....	1,175,000	6.6	77,550	75,000	1,250,000
12 U.S.C. 1832(c) and 3909(d)(1).	.....	1,100	14.6	161	0	1,100
12 U.S.C. 1884 .....	.....	110	14.6	16	0	110
12 U.S.C. 3110(a) .....	.....	27,500	14.6	4,015	5,000	32,500
15 U.S.C. 78u-2(b) .....	Tier 1 (natural person) .....	5,500	14.6	803	1,000	6,500
	Tier 1 (other person) .....	60,000	6.6	3,900	5,000	65,000
	Tier 2 (natural person) .....	60,000	6.6	3,900	5,000	65,000
	Tier 2 (other person) .....	300,000	6.6	19,800	25,000	325,000
	Tier 3 (natural person) .....	120,000	6.6	7,920	10,000	130,000
	Tier 3 (other person) .....	575,000	6.6	37,950	50,000	625,000
	Per violation .....	350	24.1	84	35	385
42 U.S.C. 4012a(f)(5) .....	Per year .....	115,000	6.6	7,475	10,000	125,000

**Technical Correction**

The OCC also is amending 12 CFR 19.240 to make a technical correction. When we issued subpart P (pertaining to the removal, suspension, and debarment of accountants from performing audit services) (68 FR 48265, Aug. 13, 2003), we inadvertently assigned a number—§ 19.241—that already appears in Subpart O. To correct this numbering overlap, the final rule amends subpart O by combining §§ 19.240 (prescribing the inflation-adjusted CMP amounts) and 19.241 (specifying when the inflation-adjusted CMP amounts apply) into § 19.240 and removes § 19.241 from subpart O. Revised § 19.240 is divided into paragraphs (a) and (b). Former § 19.240 becomes paragraph (a) and former § 19.241 becomes paragraph (b). Section 19.241 in subpart P is unchanged.

**Procedural Issues**

**1. Notice and Comment Procedure**

Under the Administrative Procedure Act (APA), an agency may dispense with public notice and an opportunity for comment if the agency finds, for good cause, that these procedural requirements are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The Act provides the OCC no discretion in calculating the amount of the civil penalty adjustment. The OCC, accordingly, cannot vary the amount of the adjustment to reflect any views or suggestions provided by commenters. In addition, combining §§ 19.240 and 19.241 is technical in nature. Therefore, notice and comment are unnecessary and delay in the form of notice and

comment procedure is contrary to the public interest. Accordingly, good cause exists to dispense with this procedure.

**2. Delayed Effective Date**

The RCDRIA requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. See 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this final rule because the rule merely increases the amount of CMPs that already exist and does not impose any additional reporting, disclosures, or other new requirements.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601(2). Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

**Executive Order 12866**

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

**Unfunded Mandates Reform Act of 1995**

The OCC has determined that this final rule will not result in expenditures

by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

**List of Subjects in 12 CFR Part 19**

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

**Authority and Issuance**

■ For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

**PART 19—RULES OF PRACTICE AND PROCEDURE**

■ 1. The authority citation for part 19 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

- 2. Section 19.241 of subpart O is removed.
- 3. Section 19.240 of subpart O is revised to read as follows:

**§ 19.240 Inflation adjustments.**

(a) The maximum amount of each civil money penalty within the OCC's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as follows:

U.S. Code citation	Description	Maximum penalty (in Dollars)
12 U.S.C. 93(b), 504, 1817(j)(16), 1818(i)(2), and 1972(2)(F)	Tier 1	6,500
	Tier 2	32,500
	Tier 3	1,250,000
12 U.S.C. 164 and 3110(c)	Tier 1	2,200
	Tier 2	27,000
	Tier 3	1,250,000
12 U.S.C. 1832(c) and 3909(d)(1)		1,100
12 U.S.C. 1884		110
12 U.S.C. 3110(a)		32,500
15 U.S.C. 78u-2(b)	Tier 1 (natural person)	6,500
	Tier 1 (other person)	65,000
	Tier 2 (natural person)	65,000
	Tier 2 (other person)	325,000
	Tier 3 (natural person)	130,000
	Tier 3 (other person)	625,000
	Per violation	385
42 U.S.C. 4012a(f)(5)	Per year	125,000

(b) The adjustments in § 19.240(a) apply to violations that occur after December 10, 2004.

Dated: November 3, 2004.

**Julie L. Williams,**

*Acting Comptroller of the Currency.*

[FR Doc. 04-24974 Filed 11-9-04; 8:45 am]

**BILLING CODE 4810-33-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA-2004-18821; Airspace Docket No. 04-ACE-47]

**Modification of Class E Airspace; St. Francis, KS**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at St. Francis, KS.

**EFFECTIVE DATE:** 0901 UTC, January 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE-520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on September 24, 2004 (69 FR 57170). The **Federal Register** subsequently published a correction to the direct final rule on October 4, 2004

(69 FR 59303). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 28, 2004.

**Anthony D. Roetzel,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 04-24976 Filed 11-9-04; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA-2004-18820; Airspace Docket No. 04-ACE-46]

**Modification of Class E Airspace; Kennett, MO**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Kennett, MO.

**EFFECTIVE DATE:** 0901 UTC, January 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2524.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on September 28, 2004 (69 FR 57839). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 28, 2004.

**Anthony D. Roetzel,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 04-24975 Filed 11-9-04; 8:45 am]

**BILLING CODE 4910-13-M**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52**

[R05-OAR-2004-WI-0001; FRL-7829-4]

**Approval and Promulgation of Implementation Plan; Wisconsin**

**AGENCY:** Environmental Protection Agency (EPA).