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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Parts 2634 and 2636

RINs 3209-AA00 and 3209-AA13

#### Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule; technical amendments.

**SUMMARY:** In accordance with the 1990 Federal Civil Penalties Inflation Adjustment Act as amended by the 1996 Debt Collection Improvement Act, these final rule amendments incorporate 10% inflation adjustments for each of the five civil monetary penalties provided in the Ethics in Government Act, as reflected in the executive branchwide financial disclosure and outside employment/activities regulations promulgated by OGE.

**EFFECTIVE DATE:** September 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** William E. Gressman, Senior Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Office of Government Ethics is issuing these final rule technical amendments as mandated by the Debt Collection Improvement Act of 1996, section 31001 of Pub. L. 104-134, 110 Stat. 1321, to adjust for inflation the civil monetary penalties (CMP) provided in the Ethics in Government Act of 1978 as amended (the "Ethics Act"), 5 U.S.C. appendix. As explained below, all of the Ethics Act penalties are being raised by 10%, effective September 29, 1999. These adjustments will bring the Ethics Act CMPs into line with inflation since they were last

adjusted in the 1989 Ethics Reform Act, thereby promoting compliance with the law.

The Debt Collection Improvement Act revised sections 4 and 5 of, and added a new section 7 to, the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, to require Federal agencies to regularly adjust certain statutory CMPs for inflation. As amended, that statute requires each Federal agency to make an initial inflation adjustment by regulation published in the **Federal Register** for all applicable CMPs provided by law within its jurisdiction, and to make further adjustments by regulation at least once every four years thereafter for these penalty amounts. The inflation adjustments are to be rounded, in pertinent part, to the nearest multiple of \$1,000 for CMPs of greater than \$1,000 but less than or equal to \$10,000, such as those provided in the Ethics Act, subject to a limitation on any initial increase of no more than 10% of the penalty.

Under the Debt Collection Improvement Act, the increased penalties only apply to violations that occur after the increase takes effect, but no earlier than 180 days after the date of enactment (April 26, 1996) of that law, or October 23, 1996. In the case of the Ethics Act CMPs, the inflation adjustments will not become effective until this rulemaking takes effect on September 29, 1999.

In addition, OGE notes that a separate Department of Justice rulemaking also being published in today's issue of the **Federal Register**, includes, as part of a broader set of CMP inflation adjustments, for that Department's Civil Division (which brings Ethics Act CMP enforcement actions) new regulatory provisions being added in a new part 85 of 28 CFR which provide for the same penalties, as adjusted by the same amount and effective on the same date as are also provided for herein. The Office of Government Ethics and the Justice Department have, therefore, coordinated in issuance of these two rulemakings.

The Office of Government Ethics emphasizes that only Ethics Act violations occurring on or after the effective date of this rulemaking, September 29, 1999, will be subject to the increased civil monetary penalty

amounts. For any violations occurring prior to that date, the CMP amounts originally specified in the Ethics Act as amended by the 1989 Ethics Reform Act would apply. The modified OGE regulatory provisions will reflect both the original and adjusted CMP amounts. The Office of Government Ethics will notify departments and agencies by memorandum of this rulemaking action and its effect.

#### Ethics Act CMPs

There are five civil monetary penalties provided for in the Ethics in Government Act, as amended inter alia by the 1989 Ethics Reform Act. The law provides for a \$10,000 maximum civil penalty that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following four types of violations: knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report; knowing and willful breach of a qualified trust by trustees and interested parties; misuse of a public report; and violation of outside employment/activities provisions. In the case of outside employment/activities violations, an alternative assessable maximum penalty, if greater, is the amount of compensation received (if any) by an individual for prohibited conduct. That alternative penalty is indirectly affected by the increase in the applicable set dollar CMP in this rulemaking. In addition, a \$5,000 maximum civil monetary penalty is specified in the Ethics Act for negligent breach of a qualified trust by trustees and interested parties. See sections 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a) of the Ethics Act, 5 U.S.C. appendix, sections 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a). These penalties are reflected in 5 CFR 2634.701(b), 2634.702(a) and (b), and 2634.703 of OGE's executive branchwide financial disclosure regulation and 5 CFR 2636.104(a) of OGE's executive branchwide covered noncareer employee outside employment/activities regulation.

#### Late Filing Fee Not a CMP

The Office of Government Ethics notes that it has determined, after consultation with the Department of Justice, that the \$200 late filing fee for

public financial disclosure reports that are more than 30 days overdue (see section 105(d) of the Ethics Act, 5 U.S.C. appendix, section 105(d), and 5 CFR 2634.704 of OGE's regulations thereunder) is not a civil monetary penalty as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted and will remain at its current amount of \$200.

### Calculation of Inflation Adjustments

The Federal Civil Penalties Inflation Adjustment Act, as amended by the Debt Collection Improvement Act, requires Federal agencies to adjust CMPs within their respective jurisdictions by the cost-of-living adjustment set forth in section 5 of that law. The cost-of-living adjustment is defined as the percentage by which the U.S. Department of Labor's Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the penalty was last set or adjusted pursuant to law, subject to the rounding formula and initial 10% maximum adjustment noted above. The Ethics Act CMPs were last set by statute in the Ethics Reform Act of 1989 (with the CMP provisions becoming effective on January 1, 1991) and have not previously been administratively adjusted for inflation. The CPI for June 1989 was 371.7, while that for June 1998 was 488.2. Thus, the increase was just over 31% (additionally, OGE notes that the CPI for June 1991 was 407.3, which yields an increase to June 1998 of just under 20%). Therefore, this first statutorily required adjustment of the five Ethics Act CMPs is limited to the maximum 10% increase specified by the Debt Collection Improvement Act.

Applying the 10% increase to the Ethics Act civil monetary penalties, OGE is amending its above-noted regulatory provisions, effective September 29, 1999, to increase each of the four \$10,000 maximum penalties to a maximum of \$11,000 and the one \$5,000 maximum penalty to a maximum of \$5,500.

### Conclusion

The Office of Government Ethics, in coordination with the Justice Department will also make future inflation adjustments in accordance with the statutory formula under the Federal Civil Penalties Inflation Adjustment Act, as amended. That law provides that civil monetary penalties are to be adjusted for inflation at least

once every four years after the initial adjustment.

Finally, OGE is making a couple of minor clarifying revisions in the amended sections of its regulations subject to the CMP adjustments, as set forth below.

### Matters of Regulatory Procedure

#### *Administrative Procedure Act*

Pursuant to 5 U.S.C. 553(b), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 1990 Federal Civil Penalties Inflation Adjustment Act, as amended by the 1996 Debt Collection Improvement Act. It is also in the public interest that the adjusted rates for civil monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect. However, OGE notes that, in order to provide an appropriate period for notification to executive branch departments and agencies and their employees, these technical amendments will only take effect 30 days after the date of publication of this rulemaking in the **Federal Register**, on September 29, 1999.

#### **Executive Order 12866**

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order because they are not deemed "significant" thereunder since they are limited to the adoption of statutorily mandated inflation adjustments without interpretation.

#### **Executive Order 12988**

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

### Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees and their agencies.

### Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget.

### List of Subjects

#### *5 CFR Part 2634*

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

#### *5 CFR Part 2636*

Conflict of interests, Government employees, Penalties.

Approved: August 6, 1999.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2636 as follows:

### **PART 2634—[AMENDED]**

1. The authority citation for part 2634 is revised to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104-134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.101 is revised to read as follows:

#### **§ 2634.101 Authority.**

The regulation in this part is issued pursuant to the authority of the Ethics in Government Act of 1978, as amended; 26 U.S.C. 1043; the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996; and Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

3. Section 2634.701 is amended by revising the last sentence of paragraph (b) to read as follows:

**§ 2634.701 Failure to file or falsifying reports.**

\* \* \* \* \*

(b) \* \* \* The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed \$10,000, as provided by section 104(a) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to \$11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

\* \* \* \* \*

4. Section 2634.702 is amended by revising the respective last sentences of paragraphs (a) and (b) to read as follows:

**§ 2634.702 Breaches by trust fiduciaries and interested parties.**

(a) \* \* \* The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed \$10,000, as provided by section 102(f)(6)(C)(i) of the Act, for such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to \$11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(b) \* \* \* The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed \$5,000, as provided by section 102(f)(6)(C)(ii) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to \$5,500 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

5. Section 2634.703 is amended by revising the second sentence to read as follows:

**§ 2634.703 Misuse of public reports.**

\* \* \* The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed \$10,000, as provided by section 105(c)(2) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to \$11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation

Adjustment Act of 1990, as amended.

\* \* \*

**PART 2636—[AMENDED]**

6. The authority citation for part 2636 is revised to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104-134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

7. Section 2636.104 is amended by revising paragraph (a) to read as follows:

**§ 2636.104 Civil, disciplinary and other action.**

(a) *Civil action.* Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103 of this subpart, an employee who engages in any conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil monetary penalty of not more than \$10,000 for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to \$11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

\* \* \* \* \*

[FR Doc. 99-22348 Filed 8-27-99; 8:45 am]

BILLING CODE 6345-01-P

**DEPARTMENT OF AGRICULTURE****Farm Service Agency****7 CFR Part 761****RIN 0560-AF70****Small Hog Operation Payment Program****AGENCY:** Farm Service Agency, USDA.**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends the regulations for the Small Hog Operations Payment (SHOP) Program. Enactment of the 1999 Emergency Supplemental Appropriations Act has made more funds available for the SHOP program. This will allow the

Department to spend up to \$175 million (including the \$50 million allocated in the original, February 10, 1999, (64 FR 6495) interim rule). Payments will be made to producers in the order in which they were filed, to the extent that funds are available. As amended in this rule, the SHOP program regulations would allow hog operations to receive up to \$5,000 in total payments at a total rate of \$10 per each eligible slaughter hog and \$3.60 for eligible feeder pigs sold during the relevant marketing period. Also, this rule expands the program's eligibility provisions to allow operations to qualify so long as the operation did not sell 2,500 or more hogs during the relevant marketing period. In the original rule, the limit was set at less than 1,000 hogs. SHOP program payments already received by an eligible operation will be deducted from the expanded eligible amount an operation may have under the new rules.

**DATES:** Effective August 26, 1999. Comments on this rule must be received by September 29, 1999, in order to be assured of consideration. Comments on the information collections in this rule must be received by October 29, 1999, in order to be assured of consideration.

**ADDRESSES:** Comments should be mailed to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250-0512 or Candace Thompson, Branch Chief, PSD, FSA, USDA, at the same address; telephone: (202) 720-7901; e-mail:

candy\_\_thompson@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available on the PSD home page at

<http://www.fsa.usda.gov/dafp/psd/>.

**FOR FURTHER INFORMATION CONTACT:** Candace Thompson, (202) 720-6689.

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This interim rule is in conformance with Executive Order 12866 and has been determined to be economically significant and therefore has been reviewed by the Office of Management and Budget.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not