

Telecommunications and "Information Security", Part 2 Information Security, Export Control Classification Number (ECCN) 5E992 is amended by revising the License Requirements section and the List of Items Controlled section, to read as follows:

**5E992 "Information Security"
"technology", not controlled by 5E002.**

License Requirements

* * * * *

Control(s)	Country chart
AT applies to entire entry ..	AT Column 1.

* * * * *

List of Items Controlled

* * * * *

Items:

a. "Technology" n.e.s., for the "development", "production" or "use" of equipment controlled by 5A992.a, "information security" or cryptologic equipment controlled by 5A992.b or "software" controlled by 5D992.a or b.

b. "Technology", n.e.s., for the "use" of mass market commodities controlled by 5A992.c or mass market "software" controlled by 5D992.c.

Dated: September 26, 2008.

Christopher R. Wall,
Assistant Secretary for Export Administration.

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**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. The rules also reflect the higher

penalties enacted this year by Congress for violations of the Act prohibiting manipulation and attempted manipulation.

DATES: *Effective Date:* October 23, 2008.

FOR FURTHER INFORMATION CONTACT:

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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),¹ 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.² 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.³

Congress this year enacted the CFTC Reauthorization Act of 2008 at Title XIII of the Food, Conservation, and Energy Act of 2008, P.L. 110-246, 122 Stat. 1651 (eff. May 22, 2008)(Farm Bill). Section 13103(a)-(c) amends sections 6(c), 6b and 6c of the Act, in each case increasing the maximum civil monetary penalty that may be imposed "in any case of manipulation or attempted

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

² 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.

³ 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.

manipulation" in violation of section 6(c), 6(d), or 9(a)(2) to "the greater of \$1,000,000 or triple the monetary gain" to the violator.⁴

II. Relevant Commission CMPs

The inflation adjustment requirement applies to:

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

(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.⁵

⁴ Section 13103(a) of the Farm Bill states:

(a) ENFORCEMENT POWERS OF THE COMMISSION.—Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended in clause (3) of the 10th sentence—

(1) by inserting "(A)" after "assess such person"; and

(2) by inserting after "each such violation" the following:

“, or (B) in any case of manipulation or attempted manipulation in violation of this subsection, subsection (d) of this section, or section 9(a)(2), a civil penalty of not more than the greater of \$1,000,000 or triple the monetary gain to the person for each such violation.”.

Section 13103(b) of the Farm Bill states:

(b) NONENFORCEMENT OF RULES OF GOVERNMENT OR OTHER VIOLATIONS.—

Section 6b of such Act (7 U.S.C. 13a) is amended—

(1) In the first sentence, by inserting before the period at the end the following: “, or, in any case of manipulation or attempted manipulation in violation of section 6(c), 6(d), or 9(a)(2), a civil penalty of not more than \$1,000,000 for each such violation”; and

(2) In the second sentence, by inserting before the period at the end the following: “, except that if the failure or refusal to obey or comply with the order involved any offense under section 9(a)(2), the registered entity, director, officer, agent, or employee shall be guilty of a felony and, on conviction, shall be subject to penalties under section 9(a)(2)”.

Section 13103(c) of the Farm Bill states:

(c) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—Section 6(d) of such Act (7 U.S.C. 13a-1(d)) is amended by striking all that precedes paragraph (2) and inserting the following:

“(d) CIVIL PENALTIES.—

“(1) IN GENERAL.—In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation—

“(A) a civil penalty in the amount of not more than the greater of \$100,000 or triple the monetary gain to the person for each violation; or

“(B) in any case of manipulation or attempted manipulation in violation of section 6(c), 6(d), or 9(a)(2), a civil penalty in the amount of not more than the greater of \$1,000,000 or triple the monetary gain to the person for each violation.”

⁵ 7 U.S.C. 9, 13a and 13a-1.

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 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.

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.⁶ 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 2007 (i.e., June of the year

⁶The 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.

preceding this year), divided by that index for June 2004.⁷

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.⁸ This raw inflation increase is then rounded according to the guidelines set forth by the FCPIAA.⁹ 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.¹⁰ As a result, the 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 \$140,000 or triple the monetary gain to such person for each violation, and \$675,000 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."¹¹ Thus, the new CMP maximum may be applied only to violations of the Act that occur after the effective date of this amendment,

⁷The Consumer Price Index for all-urban consumers published by the Department of Labor for June 2007 was 624.129, and for June 2004 was 568.2. Therefore, the relevant inflation adjustment factor equals 624.129 divided by 568.2. The result is a 9.8 percent increase in the CPI between June 2003 and June 2007. Accordingly, our inflation adjustment factor is 9.8 percent, or 0.0984 for computational purposes.

⁸The current CMP maximum listed in Rule 143.8, as amended in 2004, for purposes of Sections 6(c) and 6c of the Act is \$130,000. The current CMP maximum for purposes of Section 6b of the Act is \$625,000.

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

Sections 6(c) and 6c: $(0.0984 \times \$130,000) = \$12,792$

Section 6b: $(0.0984 \times \$625,000) = \$61,500$

⁹The 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 (\$12,792) is rounded to \$10,000, while the raw inflation increase for purposes of Section 6b (\$61,500) is rounded to \$50,000.

¹⁰For purposes of Sections 6(c) and 6c of the Act, the rounded inflation increase (\$10,000) is added to the current CMP maximum (\$130,000), totaling \$140,000. 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.

¹¹See 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).

October 23, 2004. The new statutory maximum for manipulation and attempted manipulation shall apply to violations that occur after the effective date of the Farm Bill, i.e., May 22, 2008.

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.¹² 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. The change also recognizes amendments to the Act contained in the Farm Bill.

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 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 potentially will affect those persons who are found by the Commission or the Federal courts to have violated the

¹²U.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."

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.¹³

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 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.¹⁴

¹³ 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 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 Commission 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 November 1994).

¹⁴ 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"), Public Law 104-121, § 223, 110 Stat. 862 (March 29, 1996). The Commission takes these

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 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:

§ 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) Except as provided in paragraph (v) hereof, 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

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.

\$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;

(iii) For violations committed between October 23, 2004 and October 22, 2008, not more than the greater of \$130,000 or triple the monetary gain to such person for each such violation; and

(iv) For violations committed on or after October 23, 2008, not more than the greater of \$140,000 or triple the monetary gain to such person for each such violation; provided that—

(v) In any case of manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the Act committed on or after May 22, 2008, not more than the greater of \$1,000,000 or triple the monetary gain to such person for each such violation; and

(2) Except as provided in paragraph (v) hereof, 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;

(iii) For violations committed between October 23, 2004 and October 22, 2008, not more than the greater of \$130,000 or triple the monetary gain to such person for each such violation; and

(iv) For violations committed on or after October 23, 2008, not more than the greater of \$140,000 or triple the monetary gain to such person for each such violation; provided that—

(v) In any case of manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the Act committed on or after May 22, 2008, not more than the greater of \$1,000,000 or triple the monetary gain to such person for each such violation;

(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;

(iii) For violations committed between October 23, 2004 and October 22, 2008, not more than \$625,000 for each such violation; and

(iv) For violations committed on or after October 23, 2008, not more than the greater of \$675,000 or triple the monetary gain to such person for each such violation, provided that—

(v) In any case of manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the Act committed on or after May 22, 2008, not more than the greater of \$1,000,000 or triple the monetary gain each such violation.

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Issued in Washington, DC, on September 30, 2008 by the Commission.

David A. Stawick,

Secretary of the Commission.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375 and 385

[Docket No. RM01-5-000; Order No. 714]

Electronic Tariff Filings

Issued September 19, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is revising its regulations to require that all tariffs and tariff revisions and rate change applications for the public utilities, natural gas pipelines, oil pipelines and power administrations be filed electronically according to a set of standards developed in conjunction with the North American Energy Standards Board. This rule is part of the Commission's efforts to comply with the Paperwork Reduction Act, the Government Paperwork Elimination Act (GPEA), and the E-Government Act of 2002 by developing the capability to file electronically with the Commission via the Internet. Electronic filing reduces physical storage space needs and document processing time, provides for easier tracking of document filing

activity; potentially reduces mailing and courier fees; allows concurrent access to the tariff filing by multiple parties as well as the ability to download and print tariff filings; and provides automatic e-mail notification to an applicant of receipt of the filing and whether or not it has been accepted. Upon implementation of this rule, the Commission will no longer accept tariff filings submitted in paper format.

DATES: Effective Dates: This rule will become effective November 3, 2008. Implementation will begin April 1, 2010 pursuant to a six month staggered schedule.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

	Paragraph number
I. Background	2.
II. Discussion	9.
A. Electronic Filing Requirements	15.
1. Companies Required to File Tariffs Electronically	15.
2. Procedures for Making Tariff Filings	16.
3. XML Schema and Tariff Database	23.
B. Tariff Filing Requirements	33.
1. Sheets or Section Filing Requirements	35.
2. Gas and Electric Open Access Transmission Tariffs	40.
3. Versioning	46.
4. Marked Tariff Changes	52.
5. Clean Tariff Sheets Filed as Attachments	58.
6. Joint, Shared, and Section 206 Filings	60.
a. Joint Tariff Filings	61.
b. Shared Tariffs	65.
c. Section 206 Filings Related to ISOs/RTOs	74.
C. Other Business Practice Changes	77.
1. Electronic Service	77.
2. Attachment Documents	79.
3. Withdrawal of Pending Tariff Filings and Amendments to Tariff Filings	80.
4. Motions	83.
5. Rate Sheets for Tariff Filings by Intrastate and Hinshaw Pipelines	84.
D. Regulatory Text	86.
E. Transition Procedures	87.
1. Testing of Software	87.
2. Baseline Tariff Filings	92.
3. Implementation Date for eTariff	102.
III. Information Collection Statement	105.
A. Comments on the NOPR's Burden Estimates	107.