

21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Office of Food Additive Safety, we are giving notice that no objections or requests for a hearing were filed in response to the November 1, 2016, final rule. Accordingly, the amendments issued thereby became effective December 2, 2016.

Dated: January 9, 2017.

**Dennis M. Keefe,**

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2017-00534 Filed 1-19-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Parts 140, 141, 211, 213, 225, 226, 227, 243, and 249**

[178A2100DD/AAKC001030/AOA501010.999900253G]

**RIN 1076-AF35**

**Civil Penalties Inflation Adjustments; Annual Adjustments**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule provides for annual adjustments to the level of civil monetary penalties contained in Bureau of Indian Affairs (Bureau) regulations to account for inflation under the Federal Civil Penalties Inflation Adjustment Act

Improvements Act of 2015 and Office of Management and Budget (OMB) guidance.

**DATES:** This rule is effective on January 23, 2017.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs; telephone (202) 273-4680, *elizabeth.appel@bia.gov*.

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**I. Background**

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (“the Act”). The Act requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment through rulemaking and then make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil

penalties and to further the policy goals of the underlying statutes.

The Office of Management and Budget (OMB) issued guidance for Federal agencies on calculating the catch-up adjustment. See February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (M-16-06). Under the guidance, the Department identified applicable civil monetary penalties and calculated the catch-up adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI-U.

The Bureau issued an interim final rule providing for calculated catch-up adjustments on June 30, 2016 (81 FR 42478) and requesting comments post-promulgation. The Bureau issued a final rule affirming the catch-up adjustments set forth in the interim final rule on December 2, 2016 (81 FR 86953). The final rule adjusted the following civil monetary penalties, effective on August 1, 2016:

CFR citation	Description of penalty	Current penalty	Catchup adjustment multiplier	Adjusted penalty
25 CFR 140.3	Penalty for trading in Indian country without a license	\$500	2.50000	\$1,250
25 CFR 141.50	Penalty for trading on Navajo, Hopi or Zuni reservations without a license	500	2.50000	1,250
25 CFR 211.55	Penalty for violation of leases of Tribal land for mineral development, violation of part 211, or failure to comply with a notice of noncompliance or cessation order.	1,000	1.50245	1,502
25 CFR 213.37	Penalty for failure of lessee to comply with lease of restricted lands of members of the Five Civilized Tribes in Oklahoma for mining, operating regulations at part 213, or orders.	500	2.50000	1,250
25 CFR 225.37	Penalty for violation of minerals agreement, regulations at part 225, other applicable laws or regulations, or failure to comply with a notice of noncompliance or cessation order.	1,000	1.59089	1,591
25 CFR 226.42	Penalty for violation of lease of Osage reservation lands for oil and gas mining or regulations at part 226, or noncompliance with the Superintendent’s order.	500	1.78156	891
25 CFR 226.43(a)	Penalty per day for failure to obtain permission to start operations	50	1.78156	89
25 CFR 226.43(b)	Penalty per day for failure to file records	50	1.78156	89
25 CFR 226.43(c)	Penalty for each well and tank battery for failure to mark wells and tank batteries	50	1.78156	89
25 CFR 226.43(d)	Penalty each day after operations are commenced for failure to construct and maintain pits.	50	1.78156	89

CFR citation	Description of penalty	Current penalty	Catchup adjustment multiplier	Adjusted penalty
25 CFR 226.43(e) ...	Penalty for failure to comply with requirements regarding valve or other approved controlling device.	100	1.78156	178
25 CFR 226.43(f) ....	Penalty for failure to notify Superintendent before drilling, re-drilling, deepening, plugging, or abandoning any well.	200	1.78156	356
25 CFR 226.43(g) ...	Penalty per day for failure to properly care for and dispose of deleterious fluids ...	500	1.78156	891
25 CFR 226.43(h) ...	Penalty per day for failure to file plugging and other required reports .....	50	1.78156	89
25 CFR 227.24 .....	Penalty for failure of lessee of certain lands in Wind River Indian Reservation, Wyoming, for oil and gas mining to comply with lease provisions, operating regulations, regulations at part 227, or orders.	500	2.50000	1,250
25 CFR 243.8 .....	Penalty for non-Native transferees of live Alaskan reindeer who violates part 243, takes reindeer without a permit, or fails to abide by permit terms..	5,000	1.17858	5,893
25 CFR 249.6(b) .....	Penalty for fishing in violation of regulations at part 249 (Off-Reservation Treaty Fishing)..	500	2.50000	1,250

**II. Calculation of Annual Adjustments**

OMB recently issued guidance to assist Federal agencies in implementing the annual adjustments required by the Act which agencies must complete by January 15, 2017. See December 16, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (M-17-11)*. The guidance states that the cost-of-

living adjustment multiplier for 2017, based on the Consumer Price Index (CPI-U) for the month of October 2016, not seasonally adjusted, is 1.01636. (The annual inflation adjustments are based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year's October CPI-U. For 2017, OMB explains, October 2016 CPI-U (241.729)/October 2015 CPI-U (237.838) = 1.01636.) The guidance instructs agencies to complete the 2017 annual adjustment by multiplying each applicable penalty by the multiplier, 1.01636, and rounding to

the nearest dollar. Further, agencies should apply the multiplier to the most recent penalty amount that includes the catch-up adjustment required by the Act.

The annual adjustment applies to all civil monetary penalties with a dollar amount that are subject to the Act. This final rule adjusts the following civil monetary penalties contained in the Bureau's regulations for 2017 by multiplying 1.01636 (i.e., the cost-of-living adjustment multiplier for 2017) by each penalty amount as updated by the catch-up adjustment made in 2016:

CFR citation	Description of penalty	Current penalty including catchup adjustment	Annual adjustment (multiplier)	Adjusted penalty for 2017
25 CFR 140.3 .....	Penalty for trading in Indian country without a license .....	\$1,250	1.01636	\$1,270
25 CFR 141.50 .....	Penalty for trading on Navajo, Hopi or Zuni reservations without a license .....	1,250	1.01636	1,270
25 CFR 211.55 .....	Penalty for violation of leases of Tribal land for mineral development, violation of part 211, or failure to comply with a notice of noncompliance or cessation order.	1,502	1.01636	1,527
25 CFR 213.37 .....	Penalty for failure of lessee to comply with lease of restricted lands of members of the Five Civilized Tribes in Oklahoma for mining, operating regulations at part 213, or orders.	1,250	1.01636	1,270
25 CFR 225.37 .....	Penalty for violation of minerals agreement, regulations at part 225, other applicable laws or regulations, or failure to comply with a notice of noncompliance or cessation order.	1,591	1.01636	1,617
25 CFR 226.42 .....	Penalty for violation of lease of Osage reservation lands for oil and gas mining or regulations at part 226, or noncompliance with the Superintendent's order.	891	1.01636	906
25 CFR 226.43(a) ...	Penalty per day for failure to obtain permission to start operations .....	89	1.01636	90
25 CFR 226.43(b) ...	Penalty per day for failure to file records .....	89	1.01636	90
25 CFR 226.43(c) ...	Penalty for each well and tank battery for failure to mark wells and tank batteries	89	1.01636	90
25 CFR 226.43(d) ...	Penalty each day after operations are commenced for failure to construct and maintain pits.	89	1.01636	90
25 CFR 226.43(e) ...	Penalty for failure to comply with requirements regarding valve or other approved controlling device.	178	1.01636	181
25 CFR 226.43(f) ....	Penalty for failure to notify Superintendent before drilling, re-drilling, deepening, plugging, or abandoning any well.	356	1.01636	362
25 CFR 226.43(g) ...	Penalty per day for failure to properly care for and dispose of deleterious fluids ...	891	1.01636	906
25 CFR 226.43(h) ...	Penalty per day for failure to file plugging and other required reports .....	89	1.01636	90
25 CFR 227.24 .....	Penalty for failure of lessee of certain lands in Wind River Indian Reservation, Wyoming, for oil and gas mining to comply with lease provisions, operating regulations, regulations at part 227, or orders.	1,250	1.01636	1,270
25 CFR 243.8 .....	Penalty for non-Native transferees of live Alaskan reindeer who violates part 243, takes reindeer without a permit, or fails to abide by permit terms..	5,893	1.01636	5,989
25 CFR 249.6(b) .....	Penalty for fishing in violation of regulations at part 249 (Off-Reservation Treaty Fishing)..	1,250	1.01636	1,270

Consistent with the Act, the adjusted penalty levels for 2017 will take effect immediately upon the effective date of the adjustment. The adjusted penalty levels for 2017 will apply to penalties assessed after that date including, if consistent with agency policy, assessments associated with violations that occurred on or after November 2, 2015. The Act does not, however, change previously assessed penalties that the Bureau is collecting or has collected. Nor does the Act change an agency's existing statutory authorities to adjust penalties.

### III. Procedural Requirements

#### A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

#### B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule makes adjustments for inflation.

#### C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or

local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

#### F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

#### G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

#### I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information see 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

#### L. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1 (b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### M. Administrative Procedure Act

The Act requires agencies to publish annual inflation adjustments by no later than January 15, 2017, and by no later than January 15 each subsequent year, notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). OMB has interpreted this direction to mean that the usual APA public procedure for rulemaking—which includes public notice of a proposed rule, an opportunity for public comment, and a delay in the effective date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the Act requires. Accordingly, we are issuing the 2017 annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the **Federal Register**.

Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that “notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest,” the agency may issue a rule without providing notice and an opportunity for prior public comment. Under section 553(b), the Bureau finds that there is good cause to promulgate this rule without first providing for public comment. It would not be possible to meet the deadlines imposed by the Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, the Bureau is promulgating this final rule to implement the statutory directive in the Act, which requires agencies to publish a final rule and to update the civil penalty amounts by applying a specified formula. The Bureau has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule prior to promulgation. Thus, providing for notice and public comment is impracticable and unnecessary.

Furthermore, the Bureau finds under section 553(d)(3) of the APA that good cause exists to make this final rule effective immediately upon publication in the **Federal Register**. In the Act, Congress expressly required Federal agencies to publish annual inflation adjustments to civil penalties in the **Federal Register** by January 15, 2017, and not later than January 15 of every subsequent year, notwithstanding

section 553 of the APA. Under the statutory framework and OMB guidance, the new penalty levels take effect immediately upon the effective date of the adjustment. The statutory deadline does not allow time to delay this rule’s effective date beyond publication. Moreover, an effective date after January 15 would delay application of the new penalty levels, contrary to Congress’s intent.

#### List of Subjects

##### 25 CFR 140

Business and industry, Indians, Penalties.

##### 25 CFR 141

Business and industry, Credit, Indians—business and finance, Penalties.

##### 25 CFR 211

Geothermal energy, Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

##### 25 CFR 213

Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

##### 25 CFR 225

Geothermal energy, Indians—lands, Mineral resources, Mines, Oil and gas exploration, Penalties, Reporting and recordkeeping requirements, Surety bonds.

##### 25 CFR 226

Indians—lands.

##### 25 CFR 227

Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

##### 25 CFR 243

Indians, Livestock.

##### 25 CFR 249

Fishing, Indians.

For the reasons given in the preamble, the Department of the Interior amends Chapter 1 of title 25 Code of Federal Regulations as follows.

#### Title 25—Indians

#### CHAPTER 1—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

#### PART 140—LICENSED INDIAN TRADERS

■ 1. The authority citation for part 140 is revised to read as follows:

**Authority:** Sec. 5, 19 Stat. 200, sec. 1, 31 Stat. 1066 as amended; 25 U.S.C. 261, 262; 94 Stat. 544, 18 U.S.C. 437; 25 U.S.C. 2 and 9; 5 U.S.C. 301; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

#### § 140.3 [Amended]

■ 2. In § 140.3, remove “\$1,250” and add in its place “\$1,270”.

#### PART 141—BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATIONS

■ 3. The authority citation for part 141 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 25 U.S.C. 2 and 9; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

#### § 141.50 [Amended]

■ 4. In § 141.50, remove “\$1,250” and add in its place “\$1,270”.

#### PART 211—LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT

■ 5. The authority citation for part 211 is revised to read as follows:

**Authority:** Sec. 4, Act of May 11, 1938 (52 Stat. 347); Act of August 1, 1956 (70 Stat. 744); 25 U.S.C. 396a–g; 25 U.S.C. 2 and 9; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

#### § 211.55 [Amended]

■ 6. In § 211.55(a), remove “\$1,502” and add in its place “\$1,527”.

#### PART 213—LEASING OF RESTRICTED LANDS FOR MEMBERS OF FIVE CIVILIZED TRIBES, OKLAHOMA, FOR MINING

■ 7. The authority citation for part 213 is revised to read as follows:

**Authority:** Sec. 2, 35 Stat. 312; sec. 18, 41 Stat. 426; sec. 1, 45 Stat. 495; sec. 1, 47 Stat. 777; 25 U.S.C. 356; and Sec. 701, Pub. L. 114–74, 129 Stat. 599. Interpret or apply secs. 3, 11, 35 Stat. 313, 316; sec. 8, 47 Stat. 779, unless otherwise noted.

#### § 213.37 [Amended]

■ 8. In § 213.37, remove “\$1,250” and add in its place “\$1,270”.

#### PART 225—OIL AND GAS, GEOTHERMAL AND SOLID MINERALS AGREEMENTS

■ 9. The authority citation for part 225 is revised to read as follows:

**Authority:** 25 U.S.C. 2, 9, and 2101–2108; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

#### § 225.37 [Amended]

■ 10. In § 225.37(a), remove “\$1,591” and add in its place “\$1,617”.

## PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

■ 9. The authority citation for part 226 is revised to read as follows:

**Authority:** Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

### § 226.42 [Amended]

■ 10. In § 226.42, remove “\$891” and add in its place “\$906”.

### § 226.43 [Amended]

■ 11. In § 226.43:

■ a. Remove “\$89” each time it appears and add in each place “\$90” wherever it appears in this section.

■ b. In paragraph (e), remove “\$178” and add in its place “\$181”.

■ c. In paragraph (f), remove “\$356” and add in its place “\$362”.

■ d. In paragraph (g), remove “\$891” and add in its place “\$906”.

## PART 227—LEASING OF CERTAIN LANDS IN WIND RIVER INDIAN RESERVATION, WYOMING, FOR OIL AND GAS MINING

■ 12. The authority citation for part 227 is revised to read as follows:

**Authority:** Sec. 1, 39 Stat. 519; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

### § 227.24 [Amended]

■ 13. In § 227.24, remove “\$1,250” and add in its place “\$1,270”.

## PART 243—REINDEER IN ALASKA

■ 14. The authority citation for part 243 is revised to read as follows:

**Authority:** Sec. 12, 50 Stat. 902; 25 U.S.C. 500K; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

### § 243.8 [Amended]

■ 15. In § 243.8(a) introductory text, remove “\$5,893” and add in its place “\$5,989”.

## PART 249—OFF-RESERVATION TREATY FISHING

■ 16. The authority citation for part 249 is revised to read as follows:

**Authority:** 25 U.S.C. 2, and 9; 5 U.S.C. 301; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

### § 249.6 [Amended]

■ 17. In § 249.6(b), remove “\$1,250” and add in its place “\$1,270”.

Dated: January 11, 2017.

**Lawrence S. Roberts,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 2017–01076 Filed 1–19–17; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Parts 24 and 27

[Docket No. TTB–2016–0014; T.D. TTB–147; Re: Notice No. 168]

RIN 1513–AC31

### Implementation of Statutory Amendments Requiring the Modification of the Definition of Hard Cider

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Temporary rule; Treasury decision; cross reference to notice of proposed rulemaking.

**SUMMARY:** This temporary rule amends the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations to implement changes made to the definition of “hard cider” in the Internal Revenue Code of 1986 by the Protecting Americans from Tax Hikes Act of 2015. The modified definition broadens the range of wines eligible for the hard cider tax rate. TTB is amending its regulations to reflect the modified definition of hard cider effective for products removed on or after January 1, 2017, and to set forth new labeling requirements to identify products to which the hard cider tax rate applies. The new labeling requirements include both a one-year transitional rule and a new labeling requirement that takes effect for products removed on or after January 1, 2018. TTB is also soliciting comments from all interested parties on these amendments through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

**DATES:** This temporary rule is effective January 23, 2017.

**FOR FURTHER INFORMATION CONTACT:** Kara Fontaine, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone (202) 453–1039 ext. 103.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *Protecting Americans From Tax Hikes Act of 2015*

On December 18, 2015, the President signed into law the Consolidated Appropriations Act, 2016 (Pub. L. 114–113). Division Q of this Act is titled the Protecting Americans from Tax Hikes Act of 2015 (PATH Act). Section 335(a) of the PATH Act amends the Internal Revenue Code of 1986 (IRC) at 26 U.S.C. 5041 by modifying the definition of hard cider for excise tax classification purposes. Pursuant to section 335(b) of the PATH Act, the amended definition of hard cider applies to such products removed on or after January 1, 2017. The PATH Act does not change the tax rate applicable to wine eligible for the hard cider tax rate; rather, it broadens the range of products to which the hard cider tax rate applies. Among other things, the range of products to which the hard cider tax rate applies will include certain sparkling and carbonated products and certain products that are subject to the requirements of the Federal Alcohol Administration Act (FAA Act).

### *TTB Authority*

The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of the Treasury administers chapter 51 of the IRC, which sets forth the Federal excise taxes on wine and related provisions, including provisions addressing the production and marking of wine (see 26 U.S.C. chapter 51). Section 5041 of the IRC (26 U.S.C. 5041) imposes six excise tax rates, including the hard cider tax rate, on wines. These tax rates are associated with six tax classes that correspond to section 5041(b) subparagraphs (1) through (6), as follows:

- Section 5041(b)(1) imposes a tax of \$1.07 per wine gallon<sup>1</sup> on still wines containing not more than 14 percent alcohol by volume.

- Section 5041(b)(2) imposes a tax of \$1.57 per wine gallon on still wines containing more than 14 percent and not exceeding 21 percent of alcohol by volume.

- Section 5041(b)(3) imposes a tax of \$3.15 per wine gallon on still wines containing more than 21 percent and not exceeding 24 percent of alcohol by volume.

- Section 5041(b)(4) imposes a tax of \$3.40 per wine gallon on champagne and other sparkling wines.

<sup>1</sup> The TTB regulations in 27 CFR 24.10 define the term “wine gallon” as “a United States gallon of liquid measure equivalent to the volume of 231 cubic inches.”