

# Rules and Regulations

Federal Register

Vol. 68, No. 238

Thursday, December 11, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### 7 CFR Part 1942

RIN 0575-AC53

#### Fire and Rescue and Other Community Facilities Projects

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Direct final rule; correction.

**SUMMARY:** The Rural Housing Service amended its regulation to include all essential community facility projects \$300,000 and under to utilize the authority granted for fire and rescue loans. This document corrects the rule, which was published Monday, November 24, 2003.

**EFFECTIVE DATE:** February 9, 2004.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Thompson, Management Analyst, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742; Telephone: 202-692-0043.

#### SUPPLEMENTARY INFORMATION:

##### Need for Correction

As published in the direct final rule, due to an amendatory instruction error, which may be unclear, this action corrects amendatory instruction number 6 to clarify the intent of the regulation change.

##### Correction of Publication

In FR rule document 03-29212, published November 24, 2003 (68 FR 65829), make the following correction.

■ On page 65830, in the middle column, amendatory instruction number 6 is corrected to read as follows:

#### § 1942.104 [Corrected]

■ 6. In § 1942.104, paragraph (a) is revised, paragraphs (b) and (c) are removed, and paragraph (d) is redesignated as paragraph (b) and revised. (The undesignated text following newly designated paragraph (b) remains unchanged).

Dated: December 5, 2003.

**Arthur A. Garcia,**

*Administrator, Rural Housing Service.*

[FR Doc. 03-30670 Filed 12-10-03; 8:45 am]

BILLING CODE 3410-XV-P

## DEPARTMENT OF COMMERCE

### Office of the Secretary

#### 15 CFR Part 6

[Docket No. 031205307-3307-01]

RIN 0690-AA34

#### Civil Monetary Penalties; Adjustments

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule is being issued to correct adjustments to civil monetary penalties (CMP) which appeared in a Final Rule published by the Department of Commerce (the Department) on January 29, 2003, 68 FR 4380. As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the Secretary of Commerce adjusted civil monetary penalties within the jurisdiction of the Department on October 24, 1996, and again on November 1, 2000. On September 30, 2002, the United States General Accounting Office (GAO) sent the Secretary of Commerce a letter indicating that the Department's November 1, 2000, adjustment was inconsistent with the requirements of the statute, and recommending corrective action. The Department's rule of January 29, 2003 sought to bring the Department into compliance with GAO's interpretation of the statute. This rule corrects certain penalty amounts and citations provided in that rule. This rule is not retroactive. The Department will not adjust individual penalties that have already been imposed. The Department will not, as a matter of policy, seek penalties that are greater

than the corrected amounts stated in this rule for violations occurring between November 1, 2000, and the December 11, 2003.

**DATES:** This rule is effective December 11, 2003.

**ADDRESSES:** Office of the General Counsel, Department of Commerce, 14th and Constitution Avenue, NW., MS 5876, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Peter Robbins, (202) 482-0846.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410) provided for the regular evaluation of CMPs to ensure that they continued to maintain their deterrent value and that penalty amounts due to the Federal Government were properly accounted for and collected. On April 26, 1996, the Federal Civil Penalties Inflation Adjustment Act of 1990 was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) to require each agency to issue regulations to adjust its CMPs for inflation at least every four years. The amendment further provides that any resulting increases in a CMP due to the inflation adjustment should apply only to the violations that occur after the date of the publication in the **Federal Register** of the increased amount of the CMP. Accordingly, the prior penalty amounts remain effective through the date of publication.

In early 2002, GAO determined that in its 2000 adjustments, the Department had adjusted some of its civil penalties in a manner inconsistent with GAO's reading of the statute, and in particular questioned the Department's method of rounding.

As stated in the January 29, 2003, rule, the Department believes that GAO's reading of the Federal Civil Penalties Inflation Adjustment Act of 1990 produces a result which is inconsistent with the stated purpose of the statute (*i.e.*, to keep civil penalties in pace with inflation). Nevertheless, the Department sought to comply with GAO's request that the 2000 adjustments be revised. Accordingly, on January 29, 2003, the Department published a rule listing adjusted CMPs. Unfortunately, there were several improper penalty amounts and citations in that rule. The purpose of this rule is to correct those mistakes.

The changes to the CMPs made by the January 29, 2003, rule and by this rule are not retroactive. The Department will not adjust penalties that were imposed under the CMPs in the November 1, 2000, rule prior to their adjustment in either the January 29, 2003, rule or this rule. In cases in which penalties were not imposed prior to January 29, 2003, and which allege violations that occurred after November 1, 2000, the Department's policy will be not to seek penalties that exceed the amounts that are set by this rule.

During the process of reviewing the above-stated CMPs, the Department has discovered that some CMPs listed in previous adjustment notices have been incorrectly stated. The previous incorrect CMPs were the result of an oversight that failed to properly apply the CMP for the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1851, *et seq.*, to statutes that adopt its CMP by reference. The following statutes' CMPs have been listed to reflect the correct statutorily mandated penalty: 16 U.S.C. 971e(e), Atlantic Tunas Convention Act of 1975 (1995); 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982 (1990); 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985 (1990); 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act (1993); 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act (1990); and 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995.

#### Rulemaking Requirements

It has been determined that this rule is not significant for purposes of Executive Order 12866.

The Department for good cause finds that notice and opportunity for comments required by 5 U.S.C. 553(b)(B) of the Administrative Procedure Act are unnecessary and contrary to the public interest for this rulemaking because the Debt Collection Improvement Act of 1996 requires the head of each agency to adjust its civil monetary penalties for inflation by regulation at least every four years, and the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, states how to calculate the inflation adjustment. This rule merely adjusts the Department's CMPs according to the statutory requirements, as interpreted by GAO. Because the Department adjusted the CMPs in 2000 in a manner that was not in compliance with GAO's reading of the law, and then readjusted the CMPs in a manner that did not always accurately reflect the appropriate

penalties, the Department is adjusting the CMPs sooner than four years. The Department does not have any discretion in making the adjustments. Additionally, the public interest requires that the published maximums for CMPs be accurate. For the same reasons, and also because the published amounts of some penalties have now been in error between November 1, 2000, and January 29, 2003, as well as the period between January 29, 2003, and December 11, 2003, there also exists good cause to waive the thirty-day delay in effectiveness, pursuant to 5 U.S.C. 553(d)(3).

Because notice and opportunity for comment are not required by 5 U.S.C. 553, or any other law, a Regulatory Flexibility Analysis is not required and was not prepared for the purposes of the Regulatory Flexibility Act.

This rule does not contain information collection requirements for the purposes of the Paperwork Reduction Act.

#### List of Subjects in 15 CFR Part 6

Law Enforcement, Penalties.

**James L. Taylor,**

*Deputy Chief Financial Officer and Director for Financial Management.*

■ For the reasons set forth in the preamble, subtitle A of title 15 of the Code of Federal Regulations is amended as follows:

#### PART 6—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

■ 1. The authority citation for part 6 continues to read as follows:

**Authority:** Sec. 4, as amended, and sec. 5, Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104-134, 110 Stat. 1321, 28 U.S.C. 2461 note.

■ 2. Section 6.4 is revised to read as follows:

##### § 6.4 Adjustment to penalties.

- (a) Bureau of Industry and Security
  - (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act violation, from \$27,500 to \$27,500.
  - (2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act—Inspection Violation, from \$25,500 to \$25,000.
  - (3) 22 U.S.C. 6761(a)(1)(B), Chemical Weapons Convention Implementation Act—Record Keeping Violation, from \$5,100 to \$5,000.
  - (4) 50 U.S.C. 1705(a), International Emergency Economic Powers Act—Export Administration Regulation Violation, from \$12,000 to \$11,000.
  - (5) 50 U.S.C. 1705(a), International Emergency Economic Powers Act—

Chemical Weapons Convention Implementation Act, Import Restriction Violation, from \$11,000 to \$11,000.

(6) 50 U.S.C. App. 2410(c), Export Administration Act—Other Violation, from \$12,000 to \$11,000.

(7) 50 U.S.C. App. 2410(c), Export Administration Act and Section 38 of the Arms Export Control Act—National Security Violation, from \$120,000 to \$120,000.

(b) Economic Development Administration

(1) 19 U.S.C. 2349, Trade Act of 1974—False Statements or Submissions with Applications for Assistance, from \$6,000 to \$5,500.

(2) [Reserved]

(c) Economics and Statistics Administration

(1) 13 U.S.C. 304, Delinquency on Delayed Filing of Export Documentation, from \$1,200 to \$1,100.

(2) 13 U.S.C. 305, Collection of Foreign Trade Statistics—Violations, from \$1,200 to \$1,100.

(3) 22 U.S.C. 3105(a), International Investment and Trade in Services Act—Failure to Furnish Information, from \$30,000 to \$27,500.

(d) International Trade Administration

(1) 19 U.S.C. 81s, Foreign Trade Zone—Violation, from \$1,200 to \$1,100.

(2) 19 U.S.C. 1677(f)(4) U.S.-Canada FTA Protective Order—Violation, from \$120,000 to \$120,000.

(e) National Oceanic and Atmospheric Administration

(1) 15 U.S.C. 5623(a)(3), Land Remote Sensing Policy Act of 1992, from \$11,900 to \$11,000.

(2) 15 U.S.C. 5658(c), Land Remote Sensing Policy Act of 1992, from \$11,900 to \$11,000.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982, from \$30,000 to \$27,500.

(4) 16 U.S.C. 783, Sponge Act (1914), from \$600 to \$550.

(5) 16 U.S.C. 957, Tuna Conventions Act of 1950 (1962);

(i) Violation/Subsection a, from \$30,000 to \$27,500.

(ii) Subsequent Violation/Subsection a, from \$60,000 to \$60,000.

(iii) Violation/Subsection b, from \$1,200 to \$1,100.

(iv) Subsequent Violation/Subsection b, from \$6,000 to \$5,500.

(v) Violation/Subsection c, from \$120,000 to \$120,000.

(6) 16 U.S.C. 971e(e), Atlantic Tunas Convention Act of 1975 (1995), from \$109,000 to \$120,000.

(7) 16 U.S.C. 972f(b), Eastern Pacific Tuna Licensing Act of 1984;

(i) Violation/Subsections (a)(1)–(3), from \$30,000 to \$27,500.

(ii) Subsequent Violation/Subsections (a)(1)–(3), from \$60,000 to \$60,000

(iii) Violation/Subsections (a)(4)–(5), from \$6,000 to \$5,500.

(iv) Subsequent Violation/Subsections (a)(4)–(5), from \$6,000 to \$5,500.

(v) Violation/Subsection (a)(6), from \$120,000 to \$120,000.

(8) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988, from \$300,000 to \$300,000.

(9) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983, from \$11,000 to \$11,000.

(10) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1981), from \$12,000 to \$11,000.

(11) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act (1990), from \$110,000 to \$110,000.

(12) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), from \$119,000 to \$120,000.

(13) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973;

(i) Knowing Violations of Section 1538 (1988), from \$30,000 to \$27,500.

(ii) Other Knowing Violations (1988), from \$14,000 to \$13,200.

(iii) Otherwise Violations (1978), from \$600 to \$550.

(14) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), from \$120,000 to \$120,000.

(15) 16 U.S.C. 2437(a)(1), Antarctic Marine Living Resources Convention Act of 1984;

(i) Knowing Violation, from \$12,000 to \$11,000.

(ii) Violation, from \$6,000 to \$5,500.

(16) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990;

(i) Knowing Violation, from \$11,000 to \$11,000.

(ii) Violation, from \$5,500 to \$5,500.

(17) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981

(i) Sale and Purchase Violation, from \$12,000 to \$11,000.

(ii) Marking Violation, from \$300 to \$275.

(iii) False Labeling Violation, from \$12,000 to \$11,000.

(iv) Other than Marking Violation, from \$12,000 to \$11,000.

(18) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982 (1990), from \$120,000 to \$120,000.

(19) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985 (1990), from \$120,000 to \$120,000.

(20) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986, from \$5,500 to \$5,500.

(21) 16 U.S.C. 5010(a)(1), North Pacific Anadromous Stocks Act of 1992, from \$110,000 to \$110,000.

(22) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative

Management Act (1993), from \$110,000 to \$120,000.

(23) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act (1990), from \$120,000 to \$120,000.

(24) 16 U.S.C. 5507(a)(1), High Seas Fishing Compliance Act of 1995, from \$109,000 to \$110,000.

(25) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995, from \$109,000 to \$120,000.

(26) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971);

(i) Violation, from \$11,000 to \$11,000.

(ii) Subsequent Violation, from \$27,500 to \$27,500.

(27) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), from \$30,000 to \$27,500.

(28) 42 U.S.C. 9152(c)(1), Ocean Thermal Energy Conversion Act of 1980,

■ 3. Section 6.5 is revised to read as follows:

*§ 6.5 Effective date of adjustments.*

The adjustments made by Sec. 6.4 of this part, of the penalties there specified, are effective on December 11, 2003, and said penalties, as thus adjusted by the adjustments made by Sec. 6.4 of this part, shall apply only to violations occurring after December 11, 2003, and before the effective date of any future inflation adjustment thereto made subsequent to December 11, 2003 as provided in Sec. 6.6 of this part.

[FR Doc. 03–30621 Filed 12–10–03; 8:45 am]

BILLING CODE 3510–17–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960–AE97

#### Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rule.

**SUMMARY:** We are adopting without change the final rules that were published in the *Federal Register* on February 3, 2003, at 68 FR 5210, authorizing us to conduct hearings before administrative law judges (ALJs) using video teleconferencing (VTC). The revised rules authorized us to conduct hearings before ALJs at which a party or

parties to the hearing and/or a witness or witnesses may appear before the ALJ by VTC. The revised rules also provided that if we schedule you to appear at your hearing by VTC, rather than in person, and you object to use of the VTC procedure, we will reschedule your hearing as one at which you may appear in person before the ALJ. Under the revised rules, the ALJ will also consider any objection you may have to the appearance of a witness by VTC. The purpose of the rules is to provide us with greater flexibility in scheduling and holding hearings, improve hearing process efficiency, and extend another service delivery option to individuals requesting a hearing.

**DATES:** These rules were effective March 5, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Robert J. Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY 1–800–966–5906, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### Electronic Version

The electronic file of this document is available on the Internet at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawRegs>.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 5, 2001, at 66 FR 1059, we published a Notice of Proposed Rulemaking (NPRM) in which we proposed to authorize our use of VTC in conducting hearings before ALJs. One provision in the proposed rules would have given claimants the right to veto use of VTC to take both their own testimony and the testimony of vocational experts (VEs) and medical experts (MEs). On February 3, 2003, after considering the public comments received on the NPRM, we published the final rules at 68 FR 5210 authorizing our use of VTC effective March 5, 2003. The final rules made a significant change from the proposed rules by giving claimants the right to veto the use of VTC only for the purpose of taking their own testimony. Accordingly, in publishing the final rules, we requested public comment on the issue of whether