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United States General Accounting Office  
Washington, DC 20548

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September 30, 2002

The Honorable Donald L. Evans  
The Secretary of Commerce

Subject: *Department of Commerce: Compliance with the  
Inflation Adjustment Act*

Dear Mr. Secretary:

Earlier this year, we initiated a governmentwide review of the implementation of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act).<sup>1</sup> The Inflation Adjustment Act required each federal agency to issue a regulation adjusting its covered maximum and minimum civil monetary penalties for inflation by October 23, 1996, and requires them to make necessary adjustments at least once every 4 years thereafter. During our review, we determined that the Department of Commerce (DOC) had adjusted its civil penalties in a manner inconsistent with the requirements of the statute. This report is intended to bring this matter to your attention and to recommend corrective action.

### **DOC's Method of Rounding Is Inconsistent with the Requirements of the Inflation Adjustment Act**

Under the Inflation Adjustment Act, DOC (like other covered federal agencies) was required to publish a regulation by October 23, 1996, adjusting its maximum civil penalties for inflation. The amount of this adjustment was to be based on changes in the Consumer Price Index (CPI) from June of the calendar year in which DOC's penalties were last set or adjusted through June of the year prior to the adjustment (i.e., June 1995 for adjustments made in October 1996). However, the statute limited the first adjustments of an agency's penalties to 10 percent of the penalty amounts.

On October 24, 1996, DOC published a final rule adjusting its civil penalties for inflation.<sup>2</sup> In the rule, the department identified dozens of covered civil penalties and adjusted most of them by the 10 percent maximum adjustment permitted under the Inflation Adjustment Act.

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<sup>1</sup>The Inflation Adjustment Act is codified at 28 U.S.C. 2461 note. The 1990 act was amended in 1996 by the Debt Collection Improvement Act, which added the requirement for agencies to adjust their civil penalties by regulation (Pub. L. 104-134, Sec. 31001, 110 Stat. 1321-373).

<sup>2</sup>See 61 Fed. Reg. 55092.

The Inflation Adjustment Act also required DOC to examine its civil penalties by October 23, 2000, and, if necessary, make additional inflation adjustments. The calendar year 2000 adjustments were to be based on changes in the CPI from June of the year in which the penalties were last adjusted (i.e., June 1996 for the penalties that were adjusted by 10 percent) through June of the year prior to the adjustment (i.e., June 1999). The statute also includes a mechanism for rounding penalty increases, setting out penalty ranges, from amounts less than or equal to \$100 to amounts greater than \$200,000, and provides different dollar multiples for rounding the increase in each penalty range. For example, subsection 5(a) of the Inflation Adjustment Act provides that increases determined under that subsection must be rounded to the nearest “multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000.” (Emphasis added.) Similarly, it provides that increases should be rounded to the nearest “multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000.” (Emphasis added.)

On November 1, 2000, DOC published a final rule implementing a second round of penalty adjustments to account for the approximately 6 percent change in the CPI between June 1996 and June 1999.<sup>3</sup> However, in determining the amount of adjustments to be made, DOC used an incorrect approach. Specifically, DOC noted that the Inflation Adjustment Act requires the raw inflation adjustment amounts to be rounded, and said that the categories of rounding were determined by the size of the penalty increase. For example, DOC said that if the increase is greater than \$1,000 and less than or equal to \$10,000, the raw inflation adjustment amount should be rounded to the nearest multiple of \$1,000. However, as noted previously, the Inflation Adjustment Act clearly states that the appropriate category of rounding should be determined by the size of the penalty, not the size of the increase.

Had DOC used the size of the penalty to determine the appropriate category of rounding for the increase, many of the department’s penalties could not have been adjusted in November 2000.<sup>4</sup> For example, DOC increased the penalty for a violation of 50 U.S.C. 1705(b) (a provision of the International Emergency Economic Powers Act) from \$11,000 to \$12,000. Multiplying the \$11,000 base penalty times 1.06 (reflecting the 6 percent inflation between June 1996 and June 1999) yields an unrounded penalty of \$11,660—a \$660 increase. The statute provides that a penalty of this size should be rounded to the nearest multiple of \$5,000. However, the nearest multiple of \$5,000 for an unrounded increase of \$660 is zero.<sup>5</sup>

### **Recommendation for Executive Action**

Although we recognize some advantages to rounding on the basis of the size of the increase rather than the size of the penalty, such a determination does not comport

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<sup>3</sup>See 65 Fed. Reg. 65260. In this publication, DOC also adjusted for the first time 10 civil penalties that existed in October 1996 but were not included in the department’s first round of adjustments.

<sup>4</sup>We took a similar position earlier this year with regard to a direct final rule published by the Environmental Protection Agency. See B-290021, July 15, 2002.

<sup>5</sup>However, using the size of the increase to determine the appropriate category of rounding for this penalty indicates that the increase should be rounded to the nearest multiple of \$100. Because the nearest multiple of \$100 for an unrounded increase of \$660 is \$700, the penalty would be increased from \$11,000 to \$11,700—not \$12,000 as DOC did in this rule.

with the plain language of the statute. Therefore, we recommend that the Secretary of Commerce initiate a regulatory action to adjust the agency's civil penalties in a manner consistent with the requirements of the Inflation Adjustment Act.

### **Agency Comments and Our Evaluation**

On September 11, 2002, we provided a draft of this report to the Secretary of Commerce for his review and comment. On September 27, 2002, the DOC Chief Counsel for Regulation told us that the department would, as we recommended, issue new regulations adjusting its penalties in a manner consistent with the Inflation Adjustment Act. However, he also said that rounding increases based on the size of the penalty produces a result that seems inconsistent with the stated purpose of the statute—to keep civil penalties in pace with inflation.

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We are sending copies of this report to the appropriate congressional committees, and it will be available at no charge on GAO's website at <http://www.gao.gov>. If you or your staff have any questions on the matters discussed in this letter, you may contact Curtis Copeland or me at (202) 512-6806. Major contributors to this report include John Tavares and Oliver Walker.

Sincerely yours,



Victor S. Rezendes  
Managing Director  
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