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United States General Accounting Office  
Washington, DC 20548

September 9, 2002

The Honorable Robert C. Bonner  
Commissioner  
U.S. Customs Service

Subject: *U.S. Customs Service: Compliance with the Inflation  
Adjustment Act*

Dear Mr. Bonner:

Earlier this year, we initiated a governmentwide review of the implementation of the Federal Civil Penalties Inflation Adjustment Act of 1990, (Inflation Adjustment Act) as amended.<sup>1</sup> The Inflation Adjustment Act requires each federal agency to issue a regulation adjusting its covered maximum civil monetary penalties for inflation by October 23, 1996, and requires each agency to make necessary adjustments at least once every 4 years thereafter. During our review, the U.S. Customs Service's Office of Chief Counsel indicated that three of the agency's civil penalties are covered by the act but the agency had not adjusted any of them for inflation. This report is intended to bring this matter to your attention and to recommend corrective action.

### **Customs Identified Three Civil Penalties That Are Covered by the Inflation Adjustment Act**

Section 3 of the Inflation Adjustment Act defines a covered civil penalty as any "penalty, fine, or other sanction that ... is for a specific monetary amount as provided by Federal law" or "has a maximum amount provided for by Federal law," and "is assessed or enforced by an agency pursuant to Federal law" and "is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts." Customs' Office of Chief Counsel provided us with a list of civil penalties that it considered covered by the Inflation Adjustment Act.<sup>2</sup> Table 1 lists those penalties as well as their maximum penalty amounts, assessment methods, and the dates that the penalties were last set or adjusted.

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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>The Inflation Adjustment Act explicitly exempts other civil penalties that Customs administers under the Tariff Act of 1930 (19 U.S.C. 1202 et seq.).

**Table 1: U.S. Customs Service Civil Penalties Covered by the Inflation Adjustment Act**

U.S.C. citation	Description of violation	Maximum penalty amount	Assessment method	Date penalty was last set or adjusted
46 U.S.C. App. 289	Transportation of passengers between ports or places in the United States by foreign vessels	\$200	For each passenger transported and landed	1898
46 U.S.C. App. 316	Use of a foreign vessel to tow any vessel other than a vessel in distress, from any port or place in the United States, to another port or place in the United States	\$1,000 <sup>a</sup>	Per violation	1940
46 U.S.C. App. 316	Use of a foreign vessel to tow any vessel other than a vessel in distress, from any port or place in the United States to another port or place in the United States	\$50	Per ton on the measurement of every vessel towed in violation of this section	1940

Note: For purposes of this report, we considered different penalty amounts within the same statutory provisions (e.g., per violation and per ton on the measurement of every vessel towed) to be separate civil penalties.

<sup>a</sup>The statutory minimum penalty for this violation is \$250.

Source: U.S. Customs Service's Office of Chief Counsel.

### **Customs Has Not Adjusted Its Covered Civil Penalties for Inflation**

Under the Inflation Adjustment Act, Customs (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 the adjustment was to be based on changes in the Consumer Price Index (CPI) from June of the calendar year in which the penalty was last set or adjusted to 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 the agencies' penalties to 10 percent of the penalty amounts. Because the CPI had increased by more than 10 percent since the penalties in table 1 were last set or adjusted, Customs should have published a regulation in the *Federal Register* by October 23, 1996, increasing each of these penalties by 10 percent.

The Inflation Adjustment Act also required Customs to examine its civil penalties by October 23, 2000, and, if necessary, to make a second round of 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 (e.g., June 1996) to June of the year prior to the adjustment (June 1999).

However, our review of the *Federal Register* for calendar years 1996 through 2001 did not reveal any Customs regulations that increased the agency's civil penalties for inflation. Customs' Office of Chief Counsel confirmed that the agency had not published any penalty adjustment regulations pursuant to the Inflation Adjustment Act, but was not aware why the agency had not done so.

## Recommendation for Executive Action

We recommend that the Commissioner of the U.S. Customs Service initiate a regulatory action to adjust for inflation all of the agency's civil penalties that are covered by the Inflation Adjustment Act.

## Agency Comments and Our Evaluation

On August 20, 2002, we provided a draft of this report to the Commissioner of the U.S. Customs Service for his review and comment. On August 30, 2002, the Acting Director of Customs' Office of Planning provided written comments indicating that the agency concurred with our recommendation and would amend its regulations to comply with the Inflation Adjustment Act. She also said that in concert with those regulatory changes, Customs would publish a *Federal Register* notice indicating the new amounts of the penalties as adjusted for 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 web site at <http://www.gao.gov>. If you or your staff have any questions on the matters discussed in this report, you may contact Curtis Copeland or me at (202) 512-6806. Major contributors to this report include Joseph Santiago and Oliver Walker.

Sincerely yours,



Victor S. Rezendes  
Managing Director  
Strategic Issues