

TABLE 2 OF § 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Environmental statute	Statutory civil penalties for violations after December 6, 2013 through November 2, 2015, or assessed before August 1, 2016	Statutory civil penalties for violations after January 12, 2009 through December 6, 2013	Statutory civil penalties for violations after March 15, 2004 through January 12, 2009	Statutory civil penalties for violations after January 30, 1997 through March 15, 2004	Statutory civil penalties, as enacted
42 U.S.C. 7524(a)	CAA	3,750/37,500	3,750/37,500	2,750/32,500	2,750/27,500	2,500/25,000
42 U.S.C. 7524(c)(1)	CAA	320,000	295,000	270,000	220,000	200,000
42 U.S.C. 7545(d)(1)	CAA	37,500	37,500	32,500	27,500	25,000
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	37,500	37,500	32,500	27,500	25,000
42 U.S.C. 9606(b)(1)	CERCLA	37,500	37,500	32,500	27,500	25,000
42 U.S.C. 9609(a)(1)	CERCLA	37,500	37,500	32,500	27,500	25,000
42 U.S.C. 9609(b)	CERCLA	37,500/117,500	37,500/107,500	32,500/97,500	27,500/82,500	25,000/75,000
42 U.S.C. 9609(c)	CERCLA	37,500/117,500	37,500/107,500	32,500/97,500	27,500/82,500	25,000/75,000
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA).	37,500	37,500	32,500	27,500	25,000
42 U.S.C. 11045(b)(1)(A) ⁴	EPCRA	37,500	37,500	32,500	27,500	25,000
42 U.S.C. 11045(b)(2)	EPCRA	37,500/117,500	37,500/107,500	32,500/97,500	27,500/82,500	25,000/75,000
42 U.S.C. 11045(b)(3)	EPCRA	37,500/117,500	37,500/107,500	32,500/97,500	27,500/82,500	25,000/75,000
42 U.S.C. 11045(c)(1)	EPCRA	37,500	37,500	32,500	27,500	25,000
42 U.S.C. 11045(c)(2)	EPCRA	16,000	16,000	11,000	11,000	10,000
42 U.S.C. 11045(d)(1)	EPCRA	37,500	37,500	32,500	27,500	25,000
42 U.S.C. 14304(a)(1)	MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	16,000	16,000	11,000	10,000	10,000
42 U.S.C. 14304(g)	BATTERY ACT	16,000	16,000	11,000	10,000	10,000

¹ Note that 33 U.S.C. 1414b (d)(1)(B) contains additional penalty escalation provisions that must be applied to the penalty amounts set forth in this Table 2. The amounts set forth in this Table 2 reflect an inflation adjustment to the calendar year 1992 penalty amount expressed in section 104B(d)(1)(A), which is used to calculate the applicable penalty amount under MPRSA section 104B(d)(1)(B) for violations that occur in any subsequent calendar year.

² CACSO was passed on December 21, 2000 as part of Title XIV of the Consolidated Appropriations Act of 2001, Public Law 106-554, 33 U.S.C. 1901 note.

³ The original statutory penalty amounts of \$20,000 and \$50,000 under section 1432(c) of the SDWA, 42 U.S.C. 300i-1(c), were subsequently increased by Congress pursuant to section 403 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107-188 (June 12, 2002), to \$100,000 and \$1,000,000, respectively. The EPA did not adjust these new penalty amounts in its 2004 Civil Monetary Penalty Inflation Adjustment Rule ("2004 Rule"), published on February 13, 2004, because they had gone into effect less than two years prior to the 2004 Rule.

⁴ Consistent with how the EPA's other penalty authorities are displayed under this section, this Table 2 now delineates, on a subpart-by-subpart basis, the penalty authorities enumerated under section 325(b) of EPCRA, 42 U.S.C. 11045(b) (*i.e.*, 42 U.S.C. 11045(b)(1)(A), (b)(2), and (b)(3)).

[FR Doc. 2019-28019 Filed 1-10-20; 8:45 am]

BILLING CODE 6560-50-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Parts 1149 and 1158

RIN 3135-AA33

Civil Penalties Adjustment for 2020

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA) is adjusting the maximum civil monetary penalties (CMPs) that may be imposed for violations of the Program Fraud Civil Remedies Act (PFCRA) and the NEA's Restrictions on Lobbying to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) to improve the

effectiveness of civil monetary penalties and to maintain their deterrent effect. This final rule provides the 2020 annual inflation adjustments to the initial “catch-up” adjustments made on June 15, 2017, and reflects all other inflation adjustments made in the interim.

DATES: *Effective date:* This rule is effective January 13, 2020.

FOR FURTHER INFORMATION CONTACT:

Daniel Fishman, Assistant General Counsel, National Endowment for the Arts, 400 7th St. SW, Washington, DC 20506, Telephone: 202-682-5418.

SUPPLEMENTARY INFORMATION:

1. Background

On December 12, 2017 the NEA issued a final rule entitled “Federal Civil Penalties Adjustments” which finalized the NEA’s June 15, 2017 interim final rule entitled “Implementing the Federal Civil Penalties Adjustment Act Improvements Act”, implementing the 2015 Act (section 701 of Pub. L. 114-74), which amended the Inflation Adjustment Act (28 U.S.C. 2461 note) requiring catch-up and annual adjustments to the NEA’s CMPs. The 2015 Act requires agencies make annual adjustments to its CMPs for inflation.

A CMP is defined in the Inflation Adjustment Act as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

These annual inflation adjustments are based on the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the date of the adjustment, relative to the October CPI-U in the year of the previous adjustment. The formula for the amount of a CMP inflation adjustment is prescribed by law, as explained in OMB Memorandum M-16-06 (February 24, 2016), and therefore the amount of the adjustment is not subject to the exercise of discretion by the Chairman of the National Endowment for the Arts (Chairman).

The Office of Management and Budget has issued guidance on implementing and calculating the 2020 adjustment under the 2015 Act.¹ Per this guidance, the CPI-U adjustment multiplier for this annual adjustment is 1.01764. In its

prior rules, the NEA identified two CMPs, which require adjustment: The penalty for false statements under the PFCRA and the penalty for violations of the NEA’s Restrictions on Lobbying. With this rule, the NEA is adjusting the amount of those CMPs accordingly.

2. Dates of Applicability

The inflation adjustments contained in this rule shall apply to any violations assessed after January 15, 2020.

3. Adjustments

Two CMPs in NEA regulations require adjustment in accordance with the 2015 Act: (1) The penalty associated with the Program Fraud Civil Remedies Act (45 CFR 1149.9) and (2) the penalty associated with Restrictions on Lobbying (45 CFR 1158.400; 45 CFR part 1158, app. A).

A. Adjustments to Penalties Under the NEA’s Program Fraud Civil Remedies Act Regulations.

The current maximum penalty under the PFCRA for false claims and statements is currently set at \$11,462. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI-U over the relevant time period and rounding to the nearest dollar. Between October 2018 and October 2019, the CPI-U increased by 101.764 percent. Therefore, the new post-adjustment maximum penalty under the PFCRA for false statements is $\$11,462 \times 1.01764 = \$11,664.19$ which rounds to \$11,664. Therefore, the maximum penalty under the PFCRA for false claims and statements will be \$11,664.

B. Adjustments to Penalties Under the NEA’s Restrictions on Lobbying Regulations

The penalty for violations of the Restrictions on Lobbying is currently set at a range of a minimum of \$20,134 and a maximum of \$201,340. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI-U over the relevant time period and rounding to the nearest dollar. Between October 2018 and October 2019, the CPI-U increased by 101.764 percent. Therefore, the new post-adjustment minimum penalty under the Restrictions on Lobbying is $\$20,134 \times 1.01764 = \$20,478.16$, which rounds to \$20,478, and the maximum penalty under the Restrictions on Lobbying is $\$201,340 \times 1.01764 = \$204,891.64$, which rounds to \$204,892. Therefore, the range of penalties under the law on the Restrictions on Lobbying

shall be between \$20,478 and \$204,891.64.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act requires agencies to provide an opportunity for notice and comment on rulemaking and also requires agencies to delay a rule’s effective date for 30 days following the date of publication in the **Federal Register** unless an agency finds good cause to forgo these requirements. However, section 4(b)(2) of the 2015 Act requires agencies to adjust civil monetary penalties notwithstanding section 553 of the Administrative Procedure Act (APA) and publish annual inflation adjustments in the **Federal Register**. “This means that the public procedure the APA generally requires . . . is not required for agencies to issue regulations implementing the annual adjustment.” OMB Memorandum M-18-03.

Even if the 2015 Act did not except this final rule from section 553 of the APA, the NEA has good cause to dispense with notice and comment. Section 553(b)(B), authorizes agencies to dispense with notice and comment procedures for rulemaking if the agency finds good cause that notice and comment are impracticable, unnecessary, or contrary to public interest. The annual adjustments to civil penalties for inflation and the method of calculating those adjustments are established by section 5 of the 2015 Act, as amended, leaving no discretion for the NEA. Accordingly, public comment would be impracticable because the NEA would be unable to consider such comments in the rulemaking process.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 (E.O. 12866) established a process for review of rules by the Office of Information and Regulatory Affairs, which is within the Office of Management and Budget (OMB). Only “significant” proposed and final rules are subject to review under this Executive Order. “Significant,” as used in E.O. 12866, means “economically significant.” It refers to rules with (1) an impact on the economy of \$100 million; or that (2) were inconsistent or interfered with an action taken or planned by another agency; (3) materially altered the budgetary impact of entitlements, grants, user fees, or loan programs; or (4) raised novel legal or policy issues.

This final rule would not be a significant policy change and OMB has not reviewed this final rule under E.O. 12866. The NEA has made the

¹ OMB Memorandum M-20-05 (December 16, 2019).

assessments required by E.O. 12866 and determined that this final rule: (1) Will not have an effect of \$100 million or more on the economy; (2) will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and (5) does not raise novel legal or policy issues.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

Executive Order 13771 (E.O. 13771) section 5 requires that agencies, in most circumstances, remove or rescind two regulations for every regulatory action (such as the promulgation of regulations) unless they request and are specifically exempted from that order's requirements by the Director of the Office of Management and Budget (the Director).

This final rule is not subject to the requirements of E.O. 13771 because this final rule is not significant under E.O. 12866. Per OMB guidance, annual inflation adjustments "are not significant regulatory actions under E.O. 12866, they are not considered E.O. 13771 regulatory actions."² Furthermore, the NEA has requested and has received an exemption from the requirement that the agency rescind two regulations for every regulation it promulgates from the Director.

Federalism (Executive Order 13132)

This final rule does not have Federalism implications, as set forth in E.O. 13132. As used in this order, federalism implications mean "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The NEA has determined that this final rule will not have federalism implications within the meaning of E.O. 13132.

Civil Justice Reform (Executive Order 12988)

This final rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988. Specifically, this final rule is written in clear language designed to help reduce litigation.

Indian Tribal Governments (Executive Order 13175)

Under the criteria in E.O. 13175, the NEA has evaluated this final rule and determined that it would have no potential effects on federally recognized Indian Tribes.

Takings (Executive Order 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This final rule will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This final rule will not impose any "information collection" requirements under the Paperwork Reduction Act. Under the act, information collection means the obtaining or disclosure of facts or opinions by or for an agency by 10 or more nonfederal persons.

Unfunded Mandates Act of 1995 (Section 202, Pub. L. 104-4)

This final rule does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year.

National Environmental Policy Act of 1969 (5 U.S.C. 804)

The final rule will not have a significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996 (Sec. 804, Pub. L. 104-121)

This final rule would not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

E-Government Act of 2002 (44 U.S.C. 3504)

Section 206 of the E-Government Act requires agencies, to the extent practicable, to ensure that all information about that agency required to be published in the **Federal Register** is also published on a publicly accessible website. All information about the NEA required to be published in the **Federal Register** may be accessed at www.arts.gov. This Act also requires agencies to accept public comments on their rules "by electronic means."

Finally, the E-Government Act requires, to the extent practicable, that agencies ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under the Administrative Procedure Act of 1946 (5 U.S.C. 551 *et seq.*). Under this Act, an electronic docket consists of all submissions under section 553(c) of title 5, United States Code; and all other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically. The website <https://www.regulations.gov> contains electronic dockets for the NEA's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010 (5 U.S.C. 301)

Under this Act, the term "plain writing" means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. To ensure that this final rule has been written in plain and clear language so that it can be used and understood by the public, the NEA has modeled the language of this final rule on the Federal Plain Language Guidelines.

Public Participation (Executive Order 13563)

The NEA encourages public participation by ensuring its documentation is understandable by the general public, and has written this final rule in compliance with Executive Order 13563 by ensuring its accessibility, consistency, simplicity of language, and overall comprehensibility.

List of Subjects in 45 CFR Parts 1149 and 1158

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Lobbying, Penalties.

For the reasons stated in the preamble, the NEA amends 45 CFR chapter XI, subchapter B, as follows:

² *Id.*

PART 1149—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 1. The authority citation for part 1149 continues to read as follows:

Authority: 5 U.S.C. App. 8G(a)(2); 20 U.S.C. 959; 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

■ 2. Revise § 1149.9(a)(1) to read as follows:

§ 1149.9 What civil penalties and assessments may I be subjected to?

(a) * * *

(1) A civil penalty of not more than \$11,664 for each false, fictitious or fraudulent statement or claim; and

* * * * *

PART 1158—NEW RESTRICTIONS ON LOBBYING

■ 3. The authority citation for part 1158 continues to read as follows:

Authority: 20 U.S.C. 959; 28 U.S.C. 2461; 31 U.S.C. 1352.

§ 1158.400 [Amended]

■ 4. Amend § 1158.400(a), (b), and (e) by:

■ a. Removing “\$20,134” and adding in its place “\$20,478” each place it appears.

■ b. Removing “\$201,340” and adding in its place “\$204,891.64” each place it appears.

Appendix A to Part 1158 [Amended]

■ 5. Amend appendix A to part 1158 by:

■ a. Removing “\$20,134” and adding in its place “\$20,478” each place it appears.

■ b. Removing “\$201,340” and adding in its place “\$204,891.64” each place it appears.

Dated: January 3, 2020.

Gregory Gendron,

Director of Administrative Services.

[FR Doc. 2020–00121 Filed 1–10–20; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 506

[Docket No. 20–01]

RIN 3072–AC79

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (Commission) is publishing this final rule to adjust for inflation the

civil monetary penalties assessed or enforced by the Commission, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act). The 2015 Act requires that agencies adjust and publish their civil penalties by January 15 each year.

DATES: This rule is effective January 15, 2020.

FOR FURTHER INFORMATION CONTACT:

William H. Shakely, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street NW, Room 1018, Washington, DC 20573; (202) 523–5740.

SUPPLEMENTARY INFORMATION: This rule adjusts the civil monetary penalties assessable by the Commission in accordance with the 2015 Act, which became effective on November 2, 2015, section 701 of Public Law 114–74. The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law 101–410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note), in order to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

The 2015 Act requires agencies to adjust civil monetary penalties under their jurisdiction by January 15 each year, based on changes in the consumer price index (CPI–U) for the month of October in the previous calendar year. On December 16, 2019, the Office of Management and Budget published guidance stating that the CPI–U multiplier for October 2019 is 1.01764.¹ In order to complete the adjustment for January 2020, the Commission must multiply the most recent civil penalty amounts in 46 CFR part 506 by the multiplier, 1.01764.

Rulemaking Analyses and Notices

Notice and Effective Date

Adjustments under the FCPIAA, as amended by the 2015 Act, are not subject to the procedural rulemaking requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553), including the requirements for prior notice, an opportunity for comment, and a delay between the issuance of a final rule and its effective date.² As noted above, the 2015 Act requires that the Commission adjust its civil monetary penalties no later than January 15 of each year.

¹ Office of Management and Budget, M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, at 1 (Dec. 16, 2019) (M–20–05).

² FCPIAA section 4(b)(2); M–20–05 at 4.

Congressional Review Act

The rule is not a “major rule” as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis describing the impact of the rule on small entities or the head of the agency must certify that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604–605. As indicated above, this final rule is not subject to the APA’s notice and comment requirements, and the Commission is not required to either conduct a regulatory flexibility analysis or certify that the final rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This final rule does not contain any collection of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The public may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.