



22 CFR Parts 35, 103, 127, and 138

[Public Notice: 12298]

RIN 1400-AF72

Department of State 2024 Civil Monetary Penalties Inflationary Adjustment

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule is issued to adjust the civil monetary penalties (CMP) for regulatory provisions maintained and enforced by the Department of State. The revised CMP adjusts the amount of civil monetary penalties assessed by the Department of State based on the December 2023 guidance from the Office of Management and Budget and by recent legislation. For penalties adjusted according to the December 2023 guidance, the new amounts will apply only to those penalties assessed on or after the effective date of this rule, regardless of the date on which the underlying facts or violations occurred.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, Office of Management, kottmyeram@state.gov. ATTN: Regulatory Change, CMP Adjustments, (202) 647-2318.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, required the head of each agency to adjust its CMPs for inflation no later than October 23, 1996 and required agencies to make adjustments at least once every four years thereafter. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Section 701 of Pub. L. 114-74 (the 2015 Act) further amended the 1990 Act by requiring agencies to adjust CMPs, if necessary, pursuant to a “catch-up” adjustment methodology prescribed by the 2015

Act, which mandated that the catch-up adjustment take effect no later than August 1, 2016.

Additionally, the 2015 Act required agencies to make annual adjustments to their respective CMPs in accordance with guidance issued by the Office of Management and Budget (OMB).

Based on these statutes, the Department of State (the Department) published a final rule in June 2016¹ to implement the “catch-up” provisions, followed by annual updates in January of each year. The most recent update was in January 2023.²

On December 19, 2023, OMB notified agencies that the annual cost-of-living adjustment multiplier for fiscal year (FY) 2024, based on the Consumer Price Index, is 1.03241. Additional information may be found in OMB Memorandum M-24-07. This final rule amends Department CMPs for fiscal year 2024.

Overview of the Areas Affected by this Rule

See the table for specific changes. Within the Department of State (title 22, Code of Federal Regulations), this rule affects four areas:

(1) Part 35, which implements the Program Fraud Civil Remedies Act of 1986 (PFCRA), codified at 31 U.S.C. 3801-3812. The PFCRA, enacted in 1986, authorizes agencies, with approval from the Department of Justice, to pursue individuals or firms for false claims;

(2) Part 103, which implements the Chemical Weapons Convention Implementation Act of 1998 (CWC Act) (22 U.S.C. 6761). The CWC Act provided domestic implementation of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction. The penalty provisions of the CWC Act are codified at 22 U.S.C. 6761(a);

(3) Part 127, which implements the penalty provisions of sections 38(e), 39A(c), and 40(k) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(e), 2779a(c), and 2780(k)). The Assistant Secretary of State for Political-Military Affairs is responsible for the imposition of CMPs under

¹ 81 FR 36771 (Jun. 8, 2016).

² 88 FR 1505 (Jan. 11, 2023).

the International Traffic in Arms Regulations (ITAR), which is administered by the Directorate of Defense Trade Controls (DDTC); and

(4) Part 138, which implements section 319 of Pub. L. 101-121, codified at 31 U.S.C. 1352, provides penalties for recipients of Federal contracts, grants, and loans who use appropriated funds to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Any person who violates that prohibition is subject to a civil penalty. The statute also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan, or a Federal commitment to insure or guarantee a loan, to disclose any lobbying; there is a penalty for failure to disclose.

FY 2024 multiplier: 1.03241

Citation in 22 CFR	FY 23 Penalties	New FY 24 Max Penalties
§ 35.3	\$13,508 up to \$405,270	\$13,946 up to \$418,405
§ 103.6(a)(1) <i>Prohibited Acts</i>	\$45,429	\$46,901
§ 103.6(a)(2) <i>Recordkeeping Violations</i>	\$9,086	\$9,380
§ 127.10(a)(1)(i)	the greater of \$1,200,000 or the amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed	the greater of \$1,238,892 or the amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed
§ 127.10(a)(1)(ii)	\$996,685, or five times the amount of the prohibited payment, whichever is greater	\$1,028,988, or five times the amount of the prohibited payment, whichever is greater
§ 127.10(a)(1)(iii)	\$1,186,338	\$1,224,787
§ 138.400 <i>First Offenders</i>	\$23,343	\$24,100
§ 138.400 <i>Others</i>	\$23,727 up to \$237,268	\$24,496 up to \$244,958

Effective Date of Penalties

The revised CMP amounts for all penalties will go into effect on the date this rule is published. All violations for which those CMPs are assessed on or after the effective date of this

rule, regardless of whether the violation occurred before the effective date, will be assessed at the adjusted penalty level.

Future Adjustments and Reporting

The 2015 Act directed agencies to undertake an annual review of CMPs using a formula prescribed by the statute. Annual adjustments to CMPs are made in accordance with the guidance issued by OMB. As in this rulemaking, the Department of State will publish notification of annual inflation adjustments to CMPs in the *Federal Register* no later than January 15 of each year, with the adjusted amount taking effect immediately upon publication.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is publishing this rule using the “good cause” exception to the Administrative Procedure Act (5 U.S.C. 553(b)), as the Department has determined that public comment on this rulemaking would be impractical, unnecessary, or contrary to the public interest. This rulemaking is mandatory and entirely without agency discretion; it implements Pub. L. 114-74. *See* 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because this rulemaking is exempt from 5 U.S.C. 553, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This rule does not involve a 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule within the meaning of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Executive Orders 12372 and 13132

This amendment will not have 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. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Orders 12866, 14094, and 13563

The Department believes that benefits of the rulemaking outweigh any costs, and there are no feasible alternatives to this rulemaking. Pursuant to M-23-05, the Office of Information and Regulatory Affairs (OIRA) has determined that agency regulations that 1) exclusively implement the annual adjustment, 2) are consistent with this guidance, and 3) have an annual impact of less than \$100 million, are generally not significant regulatory actions under E.O. 12866. Therefore, agencies are generally not required to submit regulations satisfying those criteria to OIRA for review. This regulation satisfies all of those criteria.

Executive Order 12988

The Department of State has reviewed the amendment in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 35

Administrative practice and procedure, Claims, Fraud, Penalties.

22 CFR Part 103

Administrative practice and procedure, Chemicals, Classified information, Foreign relations, Freedom of information, International organization, Investigations, Penalties, Reporting and recordkeeping requirements.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

22 CFR Part 138

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, 22 CFR parts 35, 103, 127, and 138 are amended as follows:

PART 35 – PROGRAM FRAUD CIVIL REMEDIES

1. The authority citation for part 35 continues to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 3801 et seq.; Pub. L. 114-74, 129 Stat. 584.

§ 35.3 [Amended]

2. In § 35.3:
 - a. In paragraphs (a)(1) introductory text, (b)(1)(ii), and (f) remove “\$13,508” and add in its place “13,946; and
 - b. In paragraph (f), remove “\$405,270” and add in its place “\$418,405”.

PART 103 -- REGULATIONS FOR IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON THE TAKING OF SAMPLES AND ON ENFORCEMENT OF REQUIREMENTS CONCERNING RECORDKEEPING AND INSPECTIONS

3. The authority citation for part 103 continues to read as follows:

Authority: 22 U.S.C. 2651a; 22 U.S.C. 6701 et seq.; Pub. L. 114-74, 129 Stat. 584.

§ 103.6 [Amended]

4. In § 103.6:

- a. In paragraph (a)(1), remove "\$45,429" and add in its place "\$46,901"; and
- b. In paragraph (a)(2), remove "\$9,086" and add in its place "\$9,380".

PART 127 – VIOLATIONS AND PENALTIES

5. The authority citation for part 127 continues to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114-74, 129 Stat. 584.

§ 127.10 [Amended]

6. In § 127.10:

- a. In paragraph (a)(1)(i), remove "\$1,200,000" and add in its place "\$1,238,892";
- b. In paragraph (a)(1)(ii), remove "\$996,685" and add in its place "\$1,028,988"; and
- c. In paragraph (a)(1)(iii), remove "\$1,186,338" and add in its place "\$1,224,787".

PART 138 – RESTRICTIONS ON LOBBYING

7. The authority citation for part 138 continues to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 1352; Pub. L. 114-74, 129 Stat. 584.

§ 138.400 [Amended]

8. In § 138.400:

- a. In paragraphs (a), (b), and (e), remove "\$23,727" and "\$237,268" and add in their place "\$24,496" and "\$244,958", respectively; and
- b. In paragraph (e), remove "\$23,343" and add in its place "\$24,100".

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Billing Code: 4710-08

[FR Doc. 2023-29003 Filed: 1/4/2024 8:45 am; Publication Date: 1/5/2024]