

Board calculated the adjusted penalties for its CMPs, rounding the penalties to the nearest dollar.<sup>5</sup>

**Administrative Procedure Act**

The 2015 Act states that agencies shall make the annual adjustment “notwithstanding section 553 of title 5, United States Code.” Therefore, this rule is not subject to the provisions of the Administrative Procedure Act (the “APA”), 5 U.S.C. 553, requiring notice, public participation, and a deferred effective date.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires a regulatory flexibility analysis only for rules for which an agency is required to publish a general notice of proposed rulemaking. Because the 2015 Act states that agencies’ annual adjustments are to be made notwithstanding section 553 of title 5 of the United States Code—the APA section requiring notice of proposed rulemaking—the Board is not publishing a notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act does not apply.

**Paperwork Reduction Act**

There is no collection of information required by this final rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 12 CFR Part 263**

Administrative practice and procedure, Claims, Crime, Equal access to justice, Lawyers, Penalties.

**Authority and Issuance**

For the reasons set forth in the preamble, the Board amends 12 CFR part 263 to read as follows:

**PART 263—RULES OF PRACTICE FOR HEARINGS**

■ 1. The authority citation for part 263 continues to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 334, 347a, 504, 505, 1464, 1467, 1467a, 1817(j), 1818, 1820(k), 1829, 1831o, 1831p–1, 1832(c), 1847(b), 1847(d), 1884, 1972(2)(F), 3105, 3108, 3110, 3349, 3907, 3909(d), 4717; 15 U.S.C. 21, 781(i), 78o–4, 78o–5, 78u–2; 1639e(k); 28 U.S.C.

*to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 14, 2018).

<sup>5</sup> Under the 2015 Act and implementing OMB guidance, agencies are not required to make an adjustment to a CMP if, during the 12 months preceding the required adjustment, such penalty increased due to a law other than the 2015 Act by an amount greater than the amount of the required adjustment. No other laws have adjusted the CMPs within the Board’s jurisdiction during the preceding 12 months.

2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

■ 2. Section 263.65 is revised to read as follows:

**§ 263.65 Civil money penalty inflation adjustments.**

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, the Board has set forth in paragraph (b) of this section the adjusted maximum amounts for each civil money penalty provided by law within the Board’s jurisdiction. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The adjusted civil money penalties apply only to penalties assessed on or after February 6, 2019, whose associated violations occurred on or after November 2, 2015.

(b) *Maximum civil money penalties.* The maximum (or, in the cases of 12 U.S.C. 334 and 1832(c), fixed) civil money penalties as set forth in the referenced statutory sections are set forth in the table in this paragraph (b).

Statute	Adjusted civil money penalty
12 U.S.C. 324.	
<i>Inadvertently late or misleading reports, inter alia</i> .....	\$4,027
<i>Other late or misleading reports, inter alia</i> .....	40,269
<i>Knowingly or reckless false or misleading reports, inter alia</i> .....	2,013,399
12 U.S.C. 334 .....	292
12 U.S.C. 374a .....	292
12 U.S.C. 504.	
<i>First Tier</i> .....	10,067
<i>Second Tier</i> .....	50,334
<i>Third Tier</i> .....	2,013,399
12 U.S.C. 505.	
<i>First Tier</i> .....	10,067
<i>Second Tier</i> .....	50,334
<i>Third Tier</i> .....	2,013,399
12 U.S.C. 1464(v)(4) .....	4,027
12 U.S.C. 1464(v)(5) .....	40,269
12 U.S.C. 1464(v)(6) .....	2,013,399
12 U.S.C. 1467a(i)(2) .....	50,334
12 U.S.C. 1467a(i)(3) .....	50,334
12 U.S.C. 1467a(r).	
<i>First Tier</i> .....	4,027
<i>Second Tier</i> .....	340,269
<i>Third Tier</i> .....	2,013,399
12 U.S.C. 1817(j)(16).	
<i>First Tier</i> .....	10,067
<i>Second Tier</i> .....	50,334
<i>Third Tier</i> .....	32,013,399
12 U.S.C. 1818(i)(2).	
<i>First Tier</i> .....	10,067
<i>Second Tier</i> .....	50,334
<i>Third Tier</i> .....	2,013,399
12 U.S.C. 1820(k)(6)(A)(ii) ...	331,174

Statute	Adjusted civil money penalty
12 U.S.C. 1832(c) .....	32,924
12 U.S.C. 1847(b) .....	50,334
12 U.S.C. 1847(d).	
<i>First Tier</i> .....	4,027
<i>Second Tier</i> .....	40,269
<i>Third Tier</i> .....	2,013,399
12 U.S.C. 1884 .....	292
12 U.S.C. 1972(2)(F).	
<i>First Tier</i> .....	10,067
<i>Second Tier</i> .....	50,334
<i>Third Tier</i> .....	2,013,399
12 U.S.C. 3110(a) .....	46,013
12 U.S.C. 3110(c).	
<i>First Tier</i> .....	3,682
<i>Second Tier</i> .....	36,809
<i>Third Tier</i> .....	1,840,491
12 U.S.C. 3909(d) .....	2,505
15 U.S.C. 78u–2(b)(1).	
<i>For a natural person</i> .....	9,472
<i>For any other person</i> .....	94,713
15 U.S.C. 78u–2(b)(2).	
<i>For a natural person</i> .....	94,713
<i>For any other person</i> .....	473,566
15 U.S.C. 78u–2(b)(3).	
<i>For a natural person</i> .....	189,427
<i>For any other person</i> .....	947,130
15 U.S.C. 1639e(k)(1) .....	11,563
15 U.S.C. 1639e(k)(2) .....	23,125
42 U.S.C. 4012a(f)(5) .....	2,187

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, January 29, 2019.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2019–01068 Filed 2–5–19; 8:45 am]

**BILLING CODE 6210–01–P**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 747**

**RIN 3133–AE92**

**Civil Monetary Penalty Inflation Adjustment**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is amending its regulations to adjust the maximum amount of each civil monetary penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustments, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** This final rule is effective February 6, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Marvin Shaw, Staff Attorney, at 1775 Duke Street, Alexandria, VA 22314, or telephone: (703) 518-6553.

**SUPPLEMENTARY INFORMATION:**

- I. Legal Background
- II. Calculation of Adjustments
- III. Regulatory Procedures

**I. Legal Background****A. Statutory Requirements and OMB Guidance**

The Debt Collection Improvement Act of 1996<sup>1</sup> (DCIA) amended the Federal Civil Penalties Inflation Adjustment Act of 1990<sup>2</sup> (FCPIA Act) to require every federal agency to enact regulations that adjust each CMP provided by law under its jurisdiction by the rate of inflation at least once every four years.

In November 2015, Congress further amended the CMP inflation requirements in the Bipartisan Budget Act of 2015,<sup>3</sup> which contains the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 amendments).<sup>4</sup> This legislation provided for an initial “catch-up” adjustment of CMPs in 2016, followed by annual adjustments. The catch-up adjustment reset CMP maximum amounts by setting aside the inflation adjustments that agencies made in prior years and instead calculated inflation with reference to the year when each CMP was enacted or last modified by Congress. Agencies were required to publish their catch-up adjustments in an interim final rule by July 1, 2016 and make them effective by August 1, 2016.<sup>5</sup> The NCUA complied with these requirements in a June 2016 interim final rule, followed by an October 2016 final rule to confirm the adjustments as final.<sup>6</sup>

The 2015 amendments also specified how agencies must conduct annual inflation adjustments after the 2016 catch-up adjustment. Following the catch-up adjustment, agencies must make the required adjustments and publish them in the **Federal Register** by

January 15 each year.<sup>7</sup> For 2017, the NCUA issued an interim final rule on January 6, 2017,<sup>8</sup> followed by a final rule issued on June 23, 2017.<sup>9</sup> For 2018, the NCUA issued a final rule to satisfy the agency’s requirement for the 2018 annual adjustments.<sup>10</sup> This document satisfies the agency’s requirement for the 2019 annual adjustment.

The law provides that the adjustments shall be made notwithstanding the section of the Administrative Procedure Act (APA) that requires prior notice and public comment for agency rulemaking.<sup>11</sup> The 2015 amendments also specify that each CMP maximum must be increased by the percentage by which the consumer price index for urban consumers (CPI-U)<sup>12</sup> for October of the year immediately preceding the year the adjustment is made exceeds the CPI-U for October of the prior year.<sup>13</sup> For example, for the adjustment to be made in 2019, an agency must compare the October 2017 and 2018 CPI-U figures.

The 2015 amendments also provide that agencies may forgo the required annual adjustments in certain circumstances. Specifically, in a subsection titled “Other Adjustments Made,” the statute provides that an agency is not required to make an annual adjustment to a CMP if it has been increased by an amount greater than the contemplated annual adjustment in the preceding 12 months.<sup>14</sup> When these criteria are met, the agency has discretion not to make the adjustments otherwise required by the statute.

In addition, the 2015 amendments directed the Office of Management and Budget (OMB) to issue guidance to agencies on implementing the inflation adjustments.<sup>15</sup> OMB is required to issue its guidance each December and, with respect to the 2019 annual adjustment, did so on December 14, 2018.<sup>16</sup> This

OMB guidance for the 2019 adjustments includes an inflationary multiplier (1.02522) to apply to each current CMP maximum amount to determine the adjusted maximum. The guidance also addresses rulemaking procedures and agency reporting and oversight requirements for CMPs.<sup>17</sup>

**B. Application to the 2019 Adjustments**

This section applies the statutory requirements and OMB’s guidance to the NCUA’s CMPs, and sets forth the Board’s calculation of the 2019 adjustments.

As explained above, the 2015 amendments require the NCUA to adjust the maximum amounts of its CMPs by the percentage by which the October 2018 CPI-U (252.885) exceeds the October 2017 CPI-U (246.663). The percentage change is 2.522. This percentage increase can be expressed as an inflation multiplier (the quotient of the October 2018 figure divided by the October 2017 figure). Accordingly, each CMP maximum amount should be multiplied by 1.02522 to determine the adjusted maximum amount. OMB’s guidance identifies the same multiplier.

The Board has considered the exception in the 2015 amendments for adjustments made in the preceding 12 months, discussed above, and has determined that it does not apply. All of the adjustments calculated below are equal to or greater than the adjustments made in January 2018 for each CMP. Accordingly, the exception for greater adjustments in the preceding 12 months does not apply. Thus, the Board lacks discretion to decline to make the adjustments calculated below.

The table below presents the adjustment calculations. The current maximums are found at 12 CFR 747.1001, as adjusted in January 2018. This amount is multiplied by the inflation multiplier to calculate the new maximum in the far right column. Only these adjusted maximum amounts, and not the calculations, will be codified at 12 CFR 747.1001 under this final rule. The adjusted amounts were applicable January 15, 2019, and can be applied to violations that occurred on or after November 2, 2015, the date the 2015 amendments were enacted.<sup>18</sup>

Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 14, 2018), available at [https://www.whitehouse.gov/wp-content/uploads/2017/11/m\\_19\\_04.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf).

<sup>17</sup> Id.<sup>18</sup> Public Law 114-74, 129 Stat. 600 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.<sup>7</sup> Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).<sup>8</sup> 82 FR 7640 (Jan. 23, 2017).<sup>9</sup> 82 FR 29710 (June 30, 2017).<sup>10</sup> 83 FR 2029 (Jan. 16, 2018).<sup>11</sup> Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).<sup>12</sup> This index is published by the Department of Labor, Bureau of Labor Statistics, and is available at its website: <http://www.bls.gov/cpi/>.<sup>13</sup> Public Law 114-74, Sec. 701(b)(1)(2)(B), 129 Stat. 584, 600 (Nov. 2, 2015).<sup>14</sup> Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 600 (Nov. 2, 2015).<sup>15</sup> Public Law 114-74, Sec. 701(b)(4), 129 Stat. 584, 601 (Nov. 2, 2015).<sup>16</sup> OMB, Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil<sup>1</sup> Public Law 104-134, Sec. 31001(s), 110 Stat. 1321-373 (Apr. 26, 1996). The law is codified at 28 U.S.C. 2461 note.<sup>2</sup> Public Law 101-410, 104 Stat. 890 (Oct. 5, 1990), codified at 28 U.S.C. 2461 note.<sup>3</sup> Public Law 114-74, 129 Stat. 584 (Nov. 2, 2015).<sup>4</sup> 129 Stat. 599.<sup>5</sup> Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).<sup>6</sup> 81 FR 40152 (June 21, 2016); 81 FR 78028 (Nov. 7, 2016).

TABLE—CALCULATION OF MAXIMUM CMP ADJUSTMENTS

Citation	Description/tier <sup>19</sup>	Current maximum (\$)	Multiplier	Adjusted Maximum (\$) (current maximum × multiplier, rounded to nearest dollar)
12 U.S.C. 1782(a)(3) .....	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	3,928 .....	1.02522	4,027.
12 U.S.C. 1782(a)(3) .....	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	39,278 .....	1.02522	40,269.
12 U.S.C. 1782(a)(3) .....	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	Lesser of 1,963,870 or 1% of total CU assets.	1.02522	Lesser of 2,013,399 or 1% of total CU assets.
12 U.S.C. 1782(d)(2)(A) .....	Tier 1 CMP for inadvertent failure to submit certified statement of insured shares and charges due to NCUSIF, or inadvertent submission of false or misleading statement.	3,591 .....	1.02522	3,682.
12 U.S.C. 1782(d)(2)(B) .....	Tier 2 CMP for non-inadvertent failure to submit certified statement or submission of false or misleading statement.	35,904 .....	1.02522	36,809.
12 U.S.C. 1782(d)(2)(C) .....	Tier 3 CMP for failure to submit a certified statement or the submission of a false or misleading statement done knowingly or with reckless disregard.	Lesser of 1,795,216 or 1% of total CU assets.	1.02522	Lesser of 1,840,491 or 1% of total CU assets.
12 U.S.C. 1785(a)(3) .....	Non-compliance with insurance logo requirements.	122 .....	1.02522	125.
12 U.S.C. 1785(e)(3) .....	Non-compliance with NCUA security requirements.	285 .....	1.02522	292.
12 U.S.C. 1786(k)(2)(A) .....	Tier 1 CMP for violations of law, regulation, and other orders or agreements.	9,819 .....	1.02522	10,067.
12 U.S.C. 1786(k)(2)(B) .....	Tier 2 CMP for violations of law, regulation, and other orders or agreements and for recklessly engaging in unsafe or unsound practices or breaches of fiduciary duty.	49,096 .....	1.02522	50,334.
12 U.S.C. 1786(k)(2)(C) .....	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (natural person).	1,963,870 .....	1.02522	2,013,399.
12 U.S.C. 1786(k)(2)(C) .....	Tier 3 (same) (CU) .....	Lesser of 1,963,870 or 1% of total CU assets.	1.02522	Lesser of 2,013,399 or 1% of total CU assets.
12 U.S.C. 1786(w)(5)(A)(ii) .....	Non-compliance with senior examiner post-employment restrictions.	323,027 .....	1.02522	331,174.
15 U.S.C. 1639e(k) .....	Non-compliance with appraisal independence standards (first violation).	11,279 .....	1.02522	11,563.
15 U.S.C. 1639e(k) .....	Subsequent violations of the same .....	22,556 .....	1.02522	23,125.
42 U.S.C. 4012a(f)(5) .....	Non-compliance with flood insurance requirements.	2,133 .....	1.02522	2,187.

III. Regulatory Procedures

A. Final Rule Under the APA

In the 2015 amendments to the FCPIA Act, Congress provided that agencies shall make the required inflation adjustments in 2017 and subsequent years notwithstanding 5 U.S.C. 553,<sup>20</sup> which requires agencies to follow notice-and-comment procedures in rulemaking and to make rules effective no sooner than 30 days after publication in the **Federal Register**. The 2015 amendments provide a clear exception to these requirements.<sup>21</sup> In addition, the Board finds that notice-and-comment

procedures would be impracticable and unnecessary under the APA because of the largely ministerial and technical nature of the rule, which affords agencies limited discretion in promulgating the rule, and the statutory deadline for making the adjustments.<sup>22</sup> In these circumstances, the Board finds good cause to issue a final rule without issuing a notice of proposed rulemaking or soliciting public comments. The Board also finds good cause to make the final rule effective upon publication because of the statutory deadline. Accordingly, this final rule is issued without prior notice and comment and will become effective immediately upon publication.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Board to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.<sup>23</sup> For purposes of this analysis, the Board considers small credit unions to be those having under \$100 million in assets.<sup>24</sup> This final rule will not have a significant economic impact on a substantial number of small credit unions because it only affects the maximum amounts of CMPs that may be assessed in individual cases, which are not numerous and generally do not involve assessments at the maximum level. In addition, several of the CMPs

<sup>19</sup> The table uses condensed descriptions of CMP tiers. Refer to the U.S. Code citations for complete descriptions.

<sup>20</sup> Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

<sup>21</sup> See 5 U.S.C. 559; *Asiana Airlines v. Fed. Aviation Admin.*, 134 F.3d 393, 396–99 (D.C. Cir. 1998).

<sup>22</sup> 5 U.S.C. 553(b)(3)(B); see *Mid-Tex Elec. Co-op., Inc. v. Fed. Energy Regulatory Comm’n*, 822 F.2d 1123, (D.C. Cir. 1987).

<sup>23</sup> 5 U.S.C. 603(a).

<sup>24</sup> Interpretive Ruling and Policy Statement 15–1, 80 FR 57512 (Sept. 24, 2015).

are limited to a percentage of a credit union's assets. Finally, in assessing CMPs, the Board generally must consider a party's financial resources.<sup>25</sup> Because this final rule will affect few, if any, small credit unions, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

*C. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden.<sup>26</sup> For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This final rule adjusts the maximum amounts of certain CMPs that the Board may assess against individuals, entities, or credit unions but does not require any reporting or recordkeeping. Therefore, this final rule will not create new paperwork burdens or modify any existing paperwork burdens.

*D. Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule adjusts the maximum amounts of certain CMPs that the Board may assess against

individuals, entities, and federally insured credit unions, including state-chartered credit unions. However, the final rule does not create any new authority or alter the underlying statutory authorities that enable the Board to assess CMPs. Accordingly, this final rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

*E. Assessment of Federal Regulations and Policies on Families*

The Board has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.<sup>27</sup>

*F. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996<sup>28</sup> (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where the Board issues a final rule as defined by Section 551 of the APA.<sup>29</sup> The Board has submitted this final rule to OMB for it to determine whether it is a "major rule" within the meaning of the relevant sections of

SBREFA, but the Board does not believe the rule is major.

**List of Subjects in 12 CFR Part 747**

Credit unions, Civil monetary penalties.

By the National Credit Union Administration Board on January 4, 2019.

**Gerard S. Poliquin,**  
*Secretary of the Board.*

For the reasons stated above, the NCUA Board amends 12 CFR part 747 as follows:

**PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS**

■ 1. The authority for part 747 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 15 U.S.C. 1639e; 42 U.S.C. 4012a; Public Law 101–410; Public Law 104–134; Public Law 109–351; Public Law 114–74.

■ 2. Revise § 747.1001 to read as follows:

**§ 747.1001 Adjustment of civil monetary penalties by the rate of inflation.**

(a) The NCUA is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note)), to adjust the maximum amount of each civil monetary penalty within its jurisdiction by the rate of inflation. The following chart displays those adjusted amounts, as calculated pursuant to the statute:

U.S. Code citation	CMP description	New maximum amount
(1) 12 U.S.C. 1782(a)(3) .....	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	\$4,027.
(2) 12 U.S.C. 1782(a)(3) .....	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	\$40,269.
(3) 12 U.S.C. 1782(a)(3) .....	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	\$2,013,399 or 1 percent of the total assets of the credit union, whichever is less.
(4) 12 U.S.C. 1782(d)(2)(A)	Tier 1 CMP for inadvertent failure to submit certified statement of insured shares and charges due to NCUSIF, or inadvertent submission of false or misleading statement.	\$3,682.
(5) 12 U.S.C. 1782(d)(2)(B)	Tier 2 CMP for non-inadvertent failure to submit certified statement or submission of false or misleading statement.	\$36,809.
(6) 12 U.S.C. 1782(d)(2)(C)	Tier 3 CMP for failure to submit a certified statement or the submission of a false or misleading statement done knowingly or with reckless disregard.	\$1,840,491 or 1 percent of the total assets of the credit union, whichever is less.
(7) 12 U.S.C. 1785(a)(3) .....	Non-compliance with insurance logo requirements .....	\$125.
(8) 12 U.S.C. 1785(e)(3) .....	Non-compliance with NCUA security requirements .....	\$292.
(9) 12 U.S.C. 1786(k)(2)(A)	Tier 1 CMP for violations of law, regulation, and other orders or agreements.	\$10,067.

<sup>25</sup> 12 U.S.C. 1786(k)(2)(G)(i).

<sup>26</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

<sup>27</sup> Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998).

<sup>28</sup> Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996).

<sup>29</sup> 5 U.S.C. 551.

U.S. Code citation	CMP description	New maximum amount
(10) 12 U.S.C. 1786(k)(2)(A)	Tier 2 CMP for violations of law, regulation, and other orders or agreements and for recklessly engaging in unsafe or unsound practices or breaches of fiduciary duty.	\$50,334.
(11) 12 U.S.C. 1786(k)(2)(A)	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (natural person).	\$2,013,399.
(12) 12 U.S.C. 1786(k)(2)(A)	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (insured credit union).	\$2,013,399 or 1 percent of the total assets of the credit union, whichever is less.
(13) 12 U.S.C. 1786(w)(5)(ii)	Non-compliance with senior examiner post-employment restrictions.	\$331,174.
(14) 15 U.S.C. 1639e(k) .....	Non-compliance with appraisal independence requirements.	First violation: \$11,563 Subsequent violations: \$23,125.
(15) 42 U.S.C. 4012a(f)(5) ...	Non-compliance with flood insurance requirements .....	\$2,187.

(b) The adjusted amounts displayed in paragraph (a) of this section apply to civil monetary penalties that are assessed after the date the increase takes effect, including those whose associated violation or violations pre-dated the increase and occurred after November 2, 2015.

[FR Doc. 2019-01123 Filed 2-5-19; 8:45 am]

BILLING CODE 7535-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 19**

[FRL-9988-90-OAR-OECA]

**Civil Monetary Penalty Inflation Adjustment Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of the maximum (or minimum) statutory civil monetary penalty amounts under the statutes EPA administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“the 2015 Act”). The 2015 Act prescribes a formula for annually adjusting the statutory maximum (or minimum) amount of civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law. The rule does not necessarily revise the penalty amounts that EPA chooses to seek pursuant to its civil penalty policies in a particular case. EPA’s civil penalty policies, which guide enforcement personnel on how to exercise EPA’s statutory penalty authorities, take into account a number of fact-specific considerations, e.g., the seriousness of the violation, the

violator’s good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator’s ability to pay.

**DATES:** This final rule is effective February 6, 2019, and applicable beginning January 15, 2019.

**FOR FURTHER INFORMATION, CONTACT:** David Smith-Watts, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2241A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone number: (202) 564-4083; *smith-watts.david@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Since 1990, federal agencies have been required to issue regulations adjusting for inflation the statutory civil penalties<sup>1</sup> that can be imposed under the laws administered by that agency. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA), required agencies to review their statutory civil penalties every 4 years, and to adjust the statutory civil penalty amounts for inflation if the increase met the DCIA’s adjustment methodology. In accordance with the DCIA, EPA reviewed and, as appropriate, adjusted the civil penalty levels under each of the statutes the agency implements in 1996 (61 FR 69360), 2004 (69 FR 7121), 2008 (73 FR 75340), and 2013 (78 FR 66643).

The 2015 Act<sup>2</sup> required each federal agency to adjust the level of statutory

civil penalties under the laws implemented by that agency with an initial “catch-up” adjustment through an interim final rulemaking. The 2015 Act also required federal agencies, beginning on January 15, 2017, to make subsequent annual adjustments for inflation. Section 4 of the 2015 Act requires each federal agency to publish these annual adjustments by January 15 of each year. The purpose of the 2015 Act is to maintain the deterrent effect of civil penalties by translating originally enacted statutory civil penalty amounts to today’s dollars and rounding statutory civil penalties to the nearest dollar.

As required by the 2015 Act, EPA issued a catch-up rule on July 1, 2016, which was effective August 1, 2016 (81 FR 43091). EPA made its first annual adjustment on January 12, 2017, which was effective on January 15, 2017 (82 FR 3633). EPA made its second annual adjustment on January 10, 2018, which was effective on January 15, 2018 (83 FR 1190). Today’s rule implements the third annual adjustment mandated by the 2015 Act.

The 2015 Act describes the method for calculating the adjustments. Each statutory maximum and minimum<sup>3</sup> civil monetary penalty is multiplied by the cost-of-living adjustment, which is

L. 114-74) was signed into law on Nov. 2, 2015, and further amended the Federal Civil Penalties Inflation Adjustment Act of 1990.

<sup>3</sup> Under Section 3(2)(A) of the 2015 Act, “civil monetary penalty” means “a specific monetary amount as provided by Federal law”; or “has a maximum amount provided for by Federal law.” EPA-administered statutes generally refer to statutory maximum penalties, with the following exceptions: Section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), refers to a minimum penalty of “not less than \$100,000 . . .”; Section 104B(d)(1) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1414b(d)(1), refers to an exact penalty of \$600 “[f]or each dry ton (or equivalent) of sewage sludge or industrial waste dumped or transported by the person in violation of this subsection in calendar year 1992 . . .”; and Section 325(d)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11045(d)(1), refers to an exact civil penalty of \$25,000 for each frivolous trade secret claim.

<sup>1</sup> The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. 2461 note, defines “civil monetary penalty” as “any penalty, fine, or other sanction that—(A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.”

<sup>2</sup> The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub.