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DEPARTMENT OF THE INTERIOR

Office of the Secretary

2 CFR Part 1402

[DOI-2020-0020; 201D0102DM, DS62600000, DLSN 00000.000000, DX62601]

RIN 1090-AB23

Financial Assistance Interior Regulation

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule; technical amendments.

SUMMARY: The Department of the Interior (DOI) is publishing this final rule to align its regulations with new regulatory citations and requirements adopted by the Office of Management and Budget (OMB). On August 13, 2020, the OMB published a revision to their regulations regarding Guidance for Grants and Agreements. The revision was an administrative simplification and did not make any substantive changes to their regulations regarding policies and procedures. DOI now codifies these changes in its financial assistance regulations.

DATES: This final rule is effective on October 18, 2021.

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SUPPLEMENTARY INFORMATION:

I. Background

On December 26, 2013, OMB published its *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (referred to as the “Uniform Guidance,” 78 FR 78590). The OMB Uniform Guidance, 2 CFR part 200, provided a government-wide framework for Federal awards management and streamlined

administrative requirements, cost principles, and audit requirements for Federal awards, including grants and cooperative agreements. Implementation of the Uniform Guidance became effective on December 26, 2014 (79 FR 75867, December 19, 2014) and must be reviewed every five years in accordance with 2 CFR 200.109. On August 13, 2020 (85 FR 49506 as amended on February 22, 2021, in 86 FR 10439), the Office of Management and Budget (OMB) published a revision to sections of title 2 of the Code of Federal Regulations, Guidance for Grants and Agreements. The rule was an administrative simplification and did not make any substantive changes to 2 CFR part 200 policies and procedures. DOI now codifies these changes in its financial assistance regulations located in 2 CFR part 1402. This rule helps ensure that financial assistance provided by the DOI is administered in full compliance with applicable laws, regulations, policies and best practices to ensure the American people get the most value from the money the DOI spends on financial assistance.

The Administrative Procedure Act (APA) specifically provides exceptions to its notice and comment rulemaking procedures when an agency finds there is good cause to dispense with them, and incorporates the finding, and a brief statement of reasons therefore, in the rules issued (5 U.S.C. 553(b)(3)(B)). Good cause exists when an agency determines that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest. The amendments made in this final rule align DOI regulations with OMB’s regulations. OMB’s rule had a 60-day comment period and was determined to be not significant under Executive Order 12866. This final rule will be effective upon publication because it is unnecessary to further delay conforming DOI’s regulations to OMB’s regulations.

II. Section-by-Section Analysis

DOI is revising its Financial Assistance Interior Regulation at 2 CFR part 1402 for conformity with OMB’s recent revisions to title 2. Specifically, DOI is correcting 2 CFR part 1402 to align with the OMB updates to the regulatory citations in the Uniform Guidance and new regulatory requirements. This section-by-section

analysis describes the changes to the regulatory text in numerical order.

A. Section 4 Uniform Guidance Definition Citation for Foreign Entity

In § 1402.4, DOI removes “2 CFR 200.46 and 200.47” and adds in its place “2 CFR 200.1”.

B. Section 6 Uniform Guidance Definition Citation for Real Property

In § 1402.6, DOI removes “2 CFR 200.85” and adds in its place “2 CFR 200.1”.

C. Section 112(e) Uniform Guidance Citation for Remedies for Noncompliance

In § 1402.112(e), DOI removes “2 CFR 200.338” and adds in its place “2 CFR 200.339”.

D. Section 206(b) Uniform Guidance Citation for Information Contained in a Federal Award

In § 1402.206(b), DOI removes “2 CFR 200.210” and adds in its place “2 CFR 200.211”.

E. Section 207 Uniform Guidance New Requirement for Never Contract With the Enemy

In § 1402.207, DOI adds the new requirement for *Never Contract with the Enemy*. This revision reflects OMB’s changes made to 2 CFR part 200 on August 13, 2020. The Office of Management and Budget (OMB) added 2 CFR part 183, which contains a new requirement to *Never Contract with the Enemy*, which applies only to grants and cooperative agreements that exceed \$50,000 and are performed outside the United States. In addition, this includes U.S. territories, to a person or entity that is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

F. Sections 207 Uniform Guidance New Requirement for Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

In § 1402.207, DOI adds the new requirement for *Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment*. This revision reflects amendments made to 2 CFR 200 that became effective on August 13, 2020. In addition, OMB added a new section, 2 CFR 200.216,

Prohibition on certain telecommunication and video surveillance services or equipment, which prohibits Federal award recipients from using loan or grant funds to enter into contracts with entities that use covered telecommunications equipment or services.

G. Section 207(a) Standard Award Terms and Conditions That Always Apply to For-Profit Entities

In § 1402.207(a)(12), DOI adds “all applicable Executive orders,” which applies to all current directives that may impact for-profit entities as well as any future directives. This amendment aligns DOI’s regulations with OMB’s regulatory guidance in 2 CFR part 200 to support domestic preferences encouraging Federal award recipients, to the extent permitted by law, to maximize the use of goods, products, and materials produced in the United States when procuring goods and services under Federal awards. OMB’s guidance included domestic policy directives as expressed in Executive Order 13788 of April 18, 2017 (*Buy American and Hire American*) and Executive Order 13858 of January 21, 2019 (*Executive Order on Strengthening Buy American Preferences for Infrastructure Projects*), which superseded Executive Order 14005 (*Ensuring the Future Is Made in all of America by all of America’s Workers*). This revision in DOI’s regulations will reflect the current OMB guidance and also apply to any future directives issued.

H. Section 300 Uniform Guidance New Requirement for Never Contract With the Enemy

In § 1402.300, DOI adds the new requirement for *Never Contract with the Enemy*. This revision reflects OMB’s changes made to 2 CFR part 200 on August 13, 2020. The Office of Management and Budget (OMB) added 2 CFR part 183, which contains a new requirement to *Never Contract with the Enemy*, which applies only to grants and cooperative agreements that exceed \$50,000 and are performed outside the United States. In addition, this includes U.S. territories, to a person or entity that is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

I. Section 300 Uniform Guidance New Requirement for Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

In § 1402.300, DOI adds the new requirement for *Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment*. This revision reflects amendments made to 2 CFR part 200 that became effective on August 13, 2020. In addition, OMB added a new section, 2 CFR 200.216, *Prohibition on certain telecommunication and video surveillance services or equipment, which prohibits Federal award recipients from using loan or grant funds to enter into contracts with entities that use covered telecommunications equipment or services.*

J. Section 300(e) Award Requirements for Foreign Entities

In § 1402.300(e)(6), DOI removes “Public Law 113–235 (128 Stat. 2391, Dec. 16, 2014)” and adds “48 CFR 3.909–2(a).” This revision changes the citation from the Public Law to the CFR now that this law has been codified in the CFR.

III. Required Determinations

A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the OMB’s Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant. DOI is publishing this final rule to align its regulations with new regulatory citations and requirements adopted by OMB.

Executive Order 13563 reaffirms the principles of E.O. 12866, calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory objectives. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public, where these approaches are relevant, feasible, and consistent with regulatory objectives.

E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. The rule will not have a significant economic effect on a substantial number of small entities. The Department of the Interior generally does not award grants to small businesses. The vast majority of Interior grants are awarded to States, local governments, and not-for-profit organizations.

C. Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule establishes regulations for DOI financial assistance. These changes wouldn’t cause a significant impact. It will not affect business relationships, employment, investment, productivity, innovations, or the ability of U.S.-based enterprises to compete internationally.

D. Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The final rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this rule does not have significant takings implications. It does not impose any obligations on the public that would result in a taking. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This is because it would not substantially and directly

affect the relationship between the Federal and state governments. Accordingly, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) of this E.O. requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) of this E.O. requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes by committing to consultation and recognition of their right to self-governance and tribal sovereignty. This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or the distribution of power and responsibilities between the Federal Government and Indian tribes.

I. Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

J. National Environmental Policy Act

This final rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Pursuant to Department Manual 516 DM 2.3A(2), section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement “policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject to the NEPA process, either collectively or case-by-case.”

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211; therefore, a Statement of Energy Effects is not required.

List of Subjects in 2 CFR Part 1402

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities, Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grant programs—agriculture, Grant programs—business, Grant programs—communications, Grant programs—education, Grant programs—energy, Grant programs—health, Grant programs—housing and community development, Grant programs—social programs, Grants administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Incorporation by reference, Indians, Indians—education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Loan programs social programs, Loan programs—agriculture, Loan programs—business and industry, Loan programs—communications, Loan programs—energy, Loan programs—health, Loan programs—housing and community development, Manpower training programs, Migrant labor, Mortgage insurance, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territories, Privacy, Renewable energy, Reporting and recordkeeping requirements, Rural areas, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small businesses, State and local governments, Student aid, Teachers, Telecommunications, Telephone, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds, Women.

For the reasons set forth in the preamble, the Department of the Interior amends 2 CFR part 1402 as set forth below:

PART 1402—FINANCIAL ASSISTANCE INTERIOR REGULATION, SUPPLEMENTING THE UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 1402 continues to read as follows:

Authority: 5 U.S.C. 301 and 2 CFR part 200.

§ 1402.4 [Amended]

■ 2. In § 1402.4, remove “2 CFR 200.46 and 200.47” and add in its place “2 CFR 200.1”.

§ 1402.6 [Amended]

■ 3. In § 1402.6, remove “2 CFR 200.85” and add in its place “2 CFR 200.1”.

§ 1402.112 [Amended]

■ 4. In § 1402.112(e), remove “2 CFR 200.338” and add in its place “2 CFR 200.339”.

§ 1402.206 [Amended]

■ 5. In § 1402.206(b), remove “2 CFR 200.210” and add in its place “2 CFR 200.211”.

■ 6. Amend § 1402.207 by adding paragraphs (a)(10) through (12) to read as follows:

§ 1402.207 What specific conditions apply?

(a) * * *
(10) 2 CFR part 183, Never Contract With the Enemy.

(11) 2 CFR 200.216, Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment.

(12) All applicable Executive orders.

* * * * *

■ 7. Amend § 1402.300 by:

■ a. In paragraph (e)(5), removing the word “and” at the end of the paragraph;

■ b. Revising (e)(6); and

■ c. Adding paragraphs (e)(7) and (8).

The revision and additions read as follows:

§ 1402.300 What are the statutory and national policy requirements?

* * * * *

(e) * * *

(6) 48 CFR 3.909–2(a). Federal award recipients are prohibited from requiring employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or

contractors from lawfully reporting such fraud, waste, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information;

(7) 2 CFR part 183, Never Contract With the Enemy; and

(8) 2 CFR 200.216, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

This action is taken pursuant to delegated authority.

Rachael S. Taylor,

Principal Deputy Assistant Secretary—Policy, Management and Budget.

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BILLING CODE 4334–63–P

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

8 CFR Parts 270, 274a, and 280

U.S. Customs and Border Protection

19 CFR Part 4

Coast Guard

33 CFR Part 27

Transportation Security Administration

49 CFR Part 1503

RIN 1601–AA99

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Homeland Security (DHS) makes the 2021 annual inflation adjustment to its civil monetary penalties. On November 2, 2015, the President signed into law The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (The 2015 Act). Pursuant to the 2015 Act, all agencies must adjust their civil monetary penalties annually and publish the adjustment in the **Federal Register**. Accordingly, this final rule adjusts the Department's civil monetary penalties for 2021 pursuant to the 2015 Act and Executive Office of the President (EOP) Office of Management and Budget (OMB) guidance. The new penalties will be effective for penalties assessed after October 18, 2021 whose

associated violations occurred after November 2, 2015.

DATES: This rule is effective on October 18, 2021.

FOR FURTHER INFORMATION CONTACT: Hillary Hunnings, 202–282–9043, hillary.hunnings@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

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 - A. Executive Orders 12866 and 13563
 - B. Regulatory Flexibility Act
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- VI. Signing Authority

I. Statutory and Regulatory Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74 section 701 (Nov. 2, 2015)) (2015 Act).¹ The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act required agencies to: (1) Adjust the level of civil monetary penalties with an initial “catch-up” adjustment through issuance of an interim final rule (IFR) and (2) make subsequent annual adjustments for inflation. Through the “catch-up” adjustment, agencies were required to adjust the maximum amounts of civil monetary penalties to more accurately reflect inflation rates.

For the subsequent annual adjustments, the 2015 Act requires agencies to increase the penalty amounts by a cost-of-living adjustment. The 2015 Act directs OMB to provide guidance to agencies each year to assist agencies in making the annual adjustments. The 2015 Act requires agencies to make the annual adjustments no later than January 15 of each year and to publish the adjustments in the **Federal Register**.

Pursuant to the 2015 Act, DHS undertook a review of the civil penalties that DHS and its components administer.² On July 1, 2016, DHS

published an IFR adjusting the maximum civil monetary penalties with an initial “catch-up” adjustment, as required by the 2015 Act.³ DHS calculated the adjusted penalties based upon nondiscretionary provisions in the 2015 Act and upon guidance that OMB issued to agencies on February 24, 2016.⁴ The adjusted penalties were effective for civil penalties assessed after August 1, 2016 (the effective date of the IFR), whose associated violations occurred after November 2, 2015 (the date of enactment of the 2015 Act). On January 27, 2017, DHS published a final rule making the annual adjustment for 2017.⁵ On April 2, 2018, DHS made the 2018 annual inflation adjustment.⁶ On April 5, 2019, DHS made the 2019 annual inflation adjustment.⁷ On June 17, 2020, DHS made the 2020 annual inflation adjustment.⁸

II. Overview of the Final Rule

This final rule makes the 2021 annual inflation adjustments to civil monetary penalties pursuant to the 2015 Act and pursuant to guidance OMB issued to agencies on December 23, 2020.⁹ The penalty amounts in this final rule will be effective for penalties assessed after October 18, 2021 where the associated violation occurred after November 2, 2015. Consistent with OMB guidance, the 2015 Act does not change previously assessed penalties that the agency is actively collecting or has collected.

The adjusted penalty amounts will apply to penalties assessed after the effective date of this final rule. We discuss civil penalties by DHS component in Section III below. For each component identified in Section III, below, we briefly describe the

addition to tax and additional amount) under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*). See sec. 4(a)(1) of the 2015 Act. In the case of DHS, several civil penalties that are assessed by U.S. Customs and Border Protection (CBP) and the U.S. Coast Guard (USCG) fall under the Tariff Act of 1930, and therefore DHS did not adjust those civil penalties in this rulemaking.

³ See 81 FR 42987.

⁴ Office of Mgmt. & Budget, Exec. Office of The President, M–16–06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year, (Feb. 24, 2016) (<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2016/m-16-06.pdf>).

⁵ See 82 FR 8571.

⁶ See 83 FR 13826.

⁷ See 84 FR 13499.

⁸ See 85 FR 36469.

⁹ Office of Mgmt. and Budget, Exec. Office of the President, M–21–10, Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 23, 2020) (<https://www.whitehouse.gov/wp-content/uploads/2020/12/M-21-10.pdf>).

¹ The 2015 Act was part of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015).

² The 2015 Act applies to all agency civil penalties except for any penalty (including any