

representations and the visa application and other relevant documentation—

(i) The proper immigrant classification, if any, of the visa applicant, and

(ii) The applicant's eligibility to receive a visa.

(2) The officer has the authority to require that the alien answer any question deemed material to these determinations.

(c) *Certain repeat applications due to COVID-19.* The personal appearance and interview of any applicant for an immigrant visa may be waived in the discretion of the consular officer until December 13, 2023, provided that—

(1) The applicant was issued a U.S. immigrant visa on or after August 4, 2019, and is:

(i) Seeking an immigrant visa in the same classification and pursuant to the same approved petition as the previously issued immigrant visa; or

(ii) Seeking an immigrant visa pursuant to the same approved petition as the previously issued immigrant visa but in a classification that automatically converted from the classification of the previously issued immigrant visa due to the death or naturalization of the petitioner;

(2) The applicant qualifies for an immigrant visa in the same classification as the previously issued immigrant visa, or in another classification as a result of automatic conversion from the classification of the previously issued immigrant visa due to the death or naturalization of the petitioner, and pursuant to the same approved petition as the previously issued immigrant visa; and

(3) The applicant has not undergone a change in circumstances that could affect the applicant's eligibility for the visa.

■ 3. Effective December 13, 2021, through December 13, 2023, in § 42.67, add paragraph (a)(4) to read as follows:

**§ 42.67 Execution of application, registration, and fingerprinting.**

(a) \* \* \*

(4) *Form of attestation for certain repeat applications due to COVID-19.* The swearing to or signature of an application before a consular officer by an immigrant visa applicant may be waived in the discretion of the consular officer until December 13, 2023, provided the applicant is willing to affirm under penalty of perjury to the information provided on Form DS-260 or Form DS-230.

\* \* \* \* \*

■ 4. Effective December 13, 2023, revise § 42.62 to read as follows:

**§ 42.62 Personal appearance and interview of applicant.**

(a) *Personal appearance of applicant before consular officer.* Every alien applying for an immigrant visa, including an alien whose application is executed by another person pursuant to § 42.63(a)(2), shall be required to appear personally before a consular officer for the execution of the application or, if in Taiwan, before a designated officer of the American Institute in Taiwan, except that the personal appearance of any child under the age of 14 may be waived at the officer's discretion.

(b) *Interview by consular officer.* (1) Every alien executing an immigrant visa application must be interviewed by a consular officer who shall determine on the basis of the applicant's representations and the visa application and other relevant documentation—

(i) The proper immigrant classification, if any, of the visa applicant, and

(ii) The applicant's eligibility to receive a visa.

(2) The officer has the authority to require that the alien answer any question deemed material to these determinations.

**Kevin E. Bryant,**

*Deputy Director, Office of Directives Management, U.S. Department of State.*

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**BILLING CODE 4710-06-P**

**DEPARTMENT OF JUSTICE**

**28 CFR Part 85**

[Docket No. OAG 173; AG Order No. 5236-2021]

**Civil Monetary Penalties Inflation Adjustment for 2021**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Bipartisan Budget Act of 2015, for penalties assessed after December 13, 2021 with respect to violations occurring after November 2, 2015.

**DATES:** This rule is effective December 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252, RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514-8059 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Process for Implementing Annual Inflation Adjustments**

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114-74 (Nov. 2, 2015) ("BBA"), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101-410 (the "Inflation Adjustment Act"), and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

In accordance with the provisions of the BBA, on June 30, 2016 (81 FR 42491), the Department of Justice published an interim rule ("June 2016 interim rule") to adjust for inflation the civil monetary penalties assessed or enforced by components of the Department after August 1, 2016, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA. Readers may refer to the Supplementary Information (also known as the preamble) of the Department's June 2016 interim rule for additional background information regarding the statutory authority for adjustments of civil monetary penalty amounts to take account of inflation and the Department's past implementation of inflation adjustments. The June 2016 interim rule was finalized without change by the publication of a final rule on April 5, 2019 (84 FR 13525).

After the initial adjustments in 2016, the BBA also provides for agencies to adjust their civil penalties on January 15 of each year to account for inflation during the preceding year, rounded to the nearest dollar. Accordingly, on February 3, 2017 (82 FR 9131), and on January 29, 2018 (83 FR 3944), the Department published final rules pursuant to the BBA to make annual inflation adjustments in the civil monetary penalties assessed or enforced by components of the Department after those dates, with respect to violations occurring after November 2, 2015.

Most recently, the Department published a final rule on June 19, 2020 (85 FR 37004), to adjust the Department's civil money penalties. The Department did not publish an inflation adjustment rule in 2019, but the 2020 adjustments incorporated the civil penalty adjustments for both 2019 and 2020, so that the current penalty amounts are the same as if two separate rules had been published.

**II. Inflation Adjustments Made by This Rule**

As required, the Department is publishing this final rule to adjust for

2021 the civil penalties that were most recently adjusted as of June 19, 2020. Under the statutory formula, the adjustments made by this rule are based on the Bureau of Labor Statistics' Consumer Price Index for October 2020. The Office of Management and Budget (OMB) Memorandum for the Heads of Executive Departments and Agencies M-21-10 (Dec. 23, 2020) <https://www.whitehouse.gov/wp-content/uploads/2020/12/M-21-10.pdf> (last visited January 6, 2021), instructs that the applicable inflation factor for this adjustment is 1.01182.

Accordingly, this rule adjusts the civil penalty amounts in 28 CFR 85.5 by applying this inflation factor mechanically to each of the civil penalty amounts listed (rounded to the nearest dollar).

#### Example

- In 2016, the Program Fraud Civil Remedies Act penalty was increased to \$10,781 in accordance with the adjustment requirements of the BBA.
- For 2017, where the applicable inflation factor was 1.01636, the existing penalty of \$10,781 was multiplied by 1.01636 and revised to \$10,957 (rounded to the nearest dollar).
- For 2018, where the applicable inflation factor is 1.02041, the existing penalty of \$10,957 was multiplied by 1.02041 and revised to \$11,181 (rounded to the nearest dollar).
- Had an adjustment rule been published in 2019, where the applicable inflation factor was 1.02041, the existing penalty of \$11,181 would have been multiplied by 1.02522 and revised to \$11,463 (rounded to the nearest dollar).
- For the final rule in 2020 (*in which the ending 2019 penalty amounts were used as the starting penalty amounts for purposes of calculation*) the starting penalty of \$11,463 was multiplied by 1.01764 and revised to \$11,665 (rounded to the nearest dollar).
- For this final rule in 2021, where the applicable inflation factor is 1.01182, the existing penalty of \$11,665 is multiplied by 1.01182 and revised to \$11,803 (rounded to the nearest dollar).

This rule adjusts for inflation civil monetary penalties within the jurisdiction of the Department of Justice for purposes of the Inflation Adjustment Act, as amended. Other agencies are responsible for the inflation adjustments of certain other civil monetary penalties that the Department's litigating components bring suit to collect. The reader should consult the regulations of those other agencies for inflation adjustments to those penalties.

### III. Effective Date of Adjusted Civil Penalty Amounts

Under this rule, the adjusted civil penalty amounts are applicable only to civil penalties assessed after December 13, 2021, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA.

The penalty amounts set forth in the existing table in 28 CFR 85.5 are applicable to civil penalties assessed after August 1, 2016, and on or before the effective date of this rule, with respect to violations occurring after November 2, 2015. Civil penalties for violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, will continue to be subject to the civil monetary penalty amounts set forth in the Department's regulations in 28 CFR parts 20, 22, 36, 68, 71, 76, and 85 as such regulations were in effect prior to August 1, 2016 (or as set forth by statute if the amount had not yet been adjusted by regulation prior to August 1, 2016).

### IV. Statutory and Regulatory Analyses

#### A. Administrative Procedure Act

The BBA provides that, for each annual adjustment made after the initial adjustments of civil penalties in 2016, the head of an agency shall adjust the civil monetary penalties each year notwithstanding 5 U.S.C. 553. Accordingly, this rule is being issued as a final rule without prior notice and public comment, and without a delayed effective date.

#### B. Regulatory Flexibility Act

Only those entities that are determined to have violated Federal law and regulations would be affected by the increase in the civil penalty amounts made by this rule. A Regulatory Flexibility Act analysis is not required for this rule because publication of a notice of proposed rulemaking was not required. *See* 5 U.S.C. 603(a).

#### C. Executive Orders 12866 and 13563—Regulatory Review

This final rule has been drafted in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," section 1, General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies, in certain circumstances, to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This final rule implements the BBA by making an across-the-board adjustment of the civil penalty amounts in 28 CFR 85.5 to account for inflation since the adoption of the Department's final rule published on June 19, 2020.

#### D. Executive Order 13132—Federalism

This rule 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### E. Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### F. Unfunded Mandates Reform Act of 1995

This rule will not 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, 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.

#### G. Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

**List of Subjects in 28 CFR Part 85**

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

**PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT**

■ 1. The authority citation for part 85 continues to read as follows:

**Authority:** 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321; Pub. L. 114–74, section 701, 28 U.S.C. 2461 note.

■ 2. Section 85.5 is revised to read as follows:

**§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.**

For civil penalties assessed after December 13, 2021, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the eighth column of table 1 to this section. For civil penalties assessed after June 19, 2020, and on or before December 13, 2021, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the seventh column of table 1 to this section. For civil penalties assessed after January 29, 2018, and on or before June 19, 2020, whose associated violations occurred after November 2, 2015, the civil monetary

penalties provided by law within the jurisdiction of the Department are those set forth in the sixth column of table 1 to this section. For civil penalties assessed after February 3, 2017, and on or before January 29, 2018, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the fifth column of table 1 to this section. For civil penalties assessed after August 1, 2016, and on or before February 3, 2017, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the fourth column of table 1 to this section. All figures set forth in this table are maximum penalties, unless otherwise indicated.

TABLE 1 TO § 85.5

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 (\$)	DOJ penalty assessed after 2/3/17 (\$)	DOJ penalty assessed after 1/29/2018 (\$)	DOJ penalty assessed after 6/19/2020 (\$) <sup>1</sup>	DOJ penalty assessed after 12/13/2021 <sup>2</sup>
<b>ATF</b>							
18 U.S.C. 922(t)(5) .....	Brady Law—Nat'l Instant Criminal Check System; Transfer of firearm without checking NICS.	.....	8,162 .....	8,296 .....	8,465 .....	8,831 .....	8,935.
18 U.S.C. 924(p) .....	Child Safety Lock Act; Secure gun storage or safety device, violation.	.....	2,985 .....	3,034 .....	3,096 .....	3,230 .....	3,268.
<b>Civil Division</b>							
12 U.S.C. 1833a(b)(1) ...	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation.	28 CFR 85.3(a)(6).	1,893,610 .....	1,924,589 .....	1,963,870 .....	2,048,915 .....	2,073,133.
12 U.S.C. 1833a(b)(2) ...	FIRREA Violation (continuing) (per day).	28 CFR 85.3(a)(7).	1,893,610 .....	1,924,589 .....	1,963,870 .....	2,048,915 .....	2,073,133.
12 U.S.C. 1833a(b)(2) ...	FIRREA Violation (continuing).	28 CFR 85.3(a)(7).	9,468,050 .....	9,622,947 .....	9,819,351 .....	10,244,577 .....	10,365,668.
22 U.S.C. 2399b(a)(3)(A)	Foreign Assistance Act; Fraudulent Claim for Assistance (per act).	28 CFR 85.3(a)(8).	5,500 .....	5,590 .....	5,704 .....	5,951 .....	6,021.
31 U.S.C. 3729(a) .....	False Claims Act; <sup>3</sup> Violations.	28 CFR 85.3(a)(9).	Min 10,781, Max 21,563.	Min 10,957, Max 21,916.	Min 11,181, Max 22,363.	Min 11,665, Max 23,331.	Min 11,803 Max 23,607.
31 U.S.C. 3802(a)(1) .....	Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim).	28 CFR 71.3(a) ..	10,781 .....	10,957 .....	11,181 .....	11,665 .....	11,803.
31 U.S.C. 3802(a)(2) .....	Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement).	28 CFR 71.3(f) ...	10,781 .....	10,957 .....	11,181 .....	11,665 .....	11,803.
40 U.S.C. 123(a)(1)(A) ...	Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act).	28 CFR 85.3(a)(12).	5,500 .....	5,590 .....	5,704 .....	5,951 .....	6,021.
41 U.S.C. 8706(a)(1)(B)	Anti-Kickback Act; Violation Involving Kickbacks <sup>4</sup> (per occurrence)).	28 CFR 85.3(a)(13).	21,563 .....	21,916 .....	22,363 .....	23,331 .....	23,607.

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 (\$)	DOJ penalty assessed after 2/3/17 (\$)	DOJ penalty assessed after 1/29/2018 (\$)	DOJ penalty assessed after 6/19/2020 (\$) <sup>1</sup>	DOJ penalty assessed after 12/13/2021 <sup>2</sup>
18 U.S.C. 2723(b) .....	Driver's Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records—Substantial Non-compliance (per day).	.....	7,954 .....	8,084 .....	8,249 .....	8,606 .....	8,708.
18 U.S.C. 216(b) .....	Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes <sup>5</sup> (per violation).	28 CFR 85.3(c) ..	94,681 .....	96,230 .....	98,194 .....	102,446 .....	103,657.
41 U.S.C. 2105(b)(1) .....	Office of Federal Procurement Policy Act; <sup>6</sup> Violation by an individual (per violation).	.....	98,935 .....	100,554 .....	102,606 .....	107,050 .....	108,315.
41 U.S.C. 2105(b)(2) .....	Office of Federal Procurement Policy Act; <sup>6</sup> Violation by an organization (per violation).	.....	989,345 .....	1,005,531 .....	1,026,054 .....	1,070,487 .....	1,083,140.
42 U.S.C. 5157(d) .....	Disaster Relief Act of 1974; <sup>7</sup> Violation (per violation).	.....	12,500 .....	12,705 .....	12,964 .....	13,525 .....	13,685.
<b>Civil Rights Division (excluding immigration-related penalties)</b>							
18 U.S.C. 248(c)(2)(B)(i)	Freedom of Access to Clinic Entrances Act of 1994 ("FACE Act"); Nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(1)(i).	15,909 .....	16,169 .....	16,499 .....	17,161 .....	17,364.
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(1)(ii).	23,863 .....	24,253 .....	24,748 .....	25,820 .....	26,125.
18 U.S.C. 248(c)(2)(B)(i)	FACE Act; Violation other than a non-violent physical obstruction, first violation.	28 CFR 85.3(b)(2)(i).	23,863 .....	24,253 .....	24,748 .....	25,820 .....	26,125.
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Violation other than a non-violent physical obstruction, subsequent violation.	28 CFR 85.3(b)(2)(ii).	39,772 .....	40,423 .....	41,248 .....	43,034 .....	43,543.
42 U.S.C. 3614(d)(1)(C)(i).	Fair Housing Act of 1968; first violation.	28 CFR 85.3(b)(3)(i).	98,935 .....	100,554 .....	102,606 .....	107,050 .....	108,315.
42 U.S.C. 3614(d)(1)(C)(ii).	Fair Housing Act of 1968; subsequent violation.	28 CFR 85.3(b)(3)(ii).	197,869 .....	201,106 .....	205,211 .....	214,097 .....	216,628.
42 U.S.C. 12188(b)(2)(C)(i).	Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation.	28 CFR 36.504(a)(3)(i).	89,078 .....	90,535 .....	92,383 .....	96,384 .....	97,523.
42 U.S.C. 12188(b)(2)(C)(ii).	Americans With Disabilities Act; Public accommodations for individuals with disabilities subsequent violation.	28 CFR 36.504(a)(3)(ii).	178,156 .....	181,071 .....	184,767 .....	192,768 .....	195,047.
50 U.S.C. 4041(b)(3) .....	Servicemembers Civil Relief Act of 2003; first violation.	28 CFR 85.3(b)(4)(i).	59,810 .....	60,788 .....	62,029 .....	64,715 .....	65,480.
50 U.S.C. 4041(b)(3) .....	Servicemembers Civil Relief Act of 2003; subsequent violation.	28 CFR 85.3(b)(4)(ii).	119,620 .....	121,577 .....	124,058 .....	129,431 .....	130,961.
<b>Criminal Division</b>							
18 U.S.C. 983(h)(1) .....	Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim.	.....	Min 342, Max 6,834.	Min 348, Max 6,946.	Min 355, Max 7,088.	Min 370, Max 7,395.	Min 374, Max 7,482.

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 (\$)	DOJ penalty assessed after 2/3/17 (\$)	DOJ penalty assessed after 1/29/2018 (\$)	DOJ penalty assessed after 6/19/2020 (\$) <sup>1</sup>	DOJ penalty assessed after 12/13/2021 <sup>2</sup>
18 U.S.C. 1956(b) .....	Money Laundering Control Act of 1986; Violation <sup>8</sup> .	.....	21,563 .....	21,916 .....	22,363 .....	23,331 .....	23,607.
<b>DEA</b>							
21 U.S.C. 844a(a) .....	Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation).	28 CFR 76.3(a) ..	19,787 .....	20,111 .....	20,521 .....	21,410 .....	21,663.
21 U.S.C. 961(1) .....	Controlled Substance Import Export Act; Drug abuse, import or export.	28 CFR 85.3(d) ..	68,750 .....	69,875 .....	71,301 .....	74,388 .....	75,267.
21 U.S.C. 842(c)(1)(A) ...	Controlled Substances Act ("CSA"); Violations of 842(a)—other than (5), (10), (16) and (17)—Prohibited acts re: Controlled substances (per violation).	.....	62,500 .....	63,523 .....	64,820 .....	67,627 .....	68,426.
21 U.S.C. 842(c)(1)(B)(i)	CSA; Violations of 842(a)(5), (10), and (17)—Prohibited acts re: Controlled substances.	.....	14,502 .....	14,739 .....	15,040 .....	15,691 .....	15,876.
21 U.S.C. 842(c)(1)(B)(ii)	SUPPORT for Patients and Communities Act; Violations of 842(b)(ii)—Failures re: Opioids.	.....	.....	.....	100,000 (Statutory amount of new penalty enacted 10/24/18) <sup>11</sup> .	101,764 .....	102,967.
21 U.S.C. 842(c)(1)(C) ...	CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor—False labeling of anabolic steroids (per violation).	.....	500,855 .....	509,049 .....	519,439 .....	541,933 .....	548,339.
21 U.S.C. 842(c)(1)(D) ...	CSA; Violation of 825(e) at the retail level—False labeling of anabolic steroids (per violation).	.....	1,002 .....	1,018 .....	1,039 .....	1,084 .....	1,097.
21 U.S.C. 842(c)(2)(C) ...	CSA; Violation of 842(a)(11) by a business—Distribution of laboratory supply with reckless disregard <sup>9</sup> .	.....	375,613 .....	381,758 .....	389,550 .....	406,419 .....	411,223.
21 U.S.C. 842(c)(2)(D) ...	SUPPORT for Patients and Communities Act; Violations of 842(a)(5), (10) and (17) by a registered manufacture or distributor of opioids. Failures re: Opioids.	.....	.....	.....	500,000 (Statutory amount of new penalty enacted 10/24/18) <sup>11</sup> .	508,820 .....	514,834.
21 U.S.C. 856(d) .....	Illicit Drug Anti-Proliferation Act of 2003; Maintaining drug-involved premises <sup>10</sup> .	.....	321,403 .....	326,661 .....	333,328 .....	374,763 .....	379,193.
<b>Immigration-Related Penalties</b>							
8 U.S.C. 1324a(e)(4)(A)(i).	Immigration Reform and Control Act of 1986 ("IRCA"); Unlawful employment of aliens, first order (per unauthorized alien).	28 CFR 68.52(c)(1)(i).	Min 539, Max 4,313.	Min 548, Max 4,384.	Min 559, Max 4,473.	Min 583, Max 4,667.	Min 590, Max 4,722.
8 U.S.C. 1324a(e)(4)(A)(ii).	IRCA; Unlawful employment of aliens, second order (per such alien).	28 CFR 68.52(c)(1)(ii).	Min 4,313, Max 10,781.	Min 4,384, Max 10,957.	Min 4,473, Max 11,181.	Min 4,667, Max 11,665.	Min 4,722, Max 11,803.
8 U.S.C. 1324a(e)(4)(A)(iii).	IRCA; Unlawful employment of aliens, subsequent order (per such alien).	28 CFR 68.52(c)(1)(iii).	Min 6,469, Max 21,563.	Min 6,575, Max 21,916.	Min 6,709, Max 22,363.	Min 6,999, Max 23,331.	Min 7,082, Max 23,607.

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 (\$)	DOJ penalty assessed after 2/3/17 (\$)	DOJ penalty assessed after 1/29/2018 (\$)	DOJ penalty assessed after 6/19/2020 (\$) <sup>1</sup>	DOJ penalty assessed after 12/13/2021 <sup>2</sup>
8 U.S.C. 1324a(e)(5) .....	IRCA; Paperwork violation (per relevant individual).	28 CFR 68.52(c)(5).	Min 216, Max 2,156.	Min 220, Max 2,191.	Min 224, Max 2,236.	Min 234, Max 2,332.	Min 237, Max 2,360.
8 U.S.C. 1324a, (note) ...	IRCA; Violation relating to participating employer's failure to notify of final nonconfirmation of employee's employment eligibility (per relevant individual).	28 CFR 68.52(c)(6).	Min 751, Max 1,502.	Min 763, Max 1,527.	Min 779, Max 1,558.	Min 813, Max 1,625.	Min 823, Max 1,644.
8 U.S.C. 1324a(g)(2) .....	IRCA; Violation/prohibition of indemnity bonds (per violation).	28 CFR 68.52(c)(7).	2,156 .....	2,191 .....	2,236 .....	2,332 .....	2,360.
8 U.S.C. 1324b(g)(2)(B)(iv)(I).	IRCA; Unfair immigration-related employment practices, first order (per individual discriminated against).	28 CFR 68.52(d)(1)(viii).	Min 445, Max 3,563.	Min 452, Max 3,621.	Min 461, Max 3,695.	Min 481, Max 3,855.	Min 487, Max 3,901.
8 U.S.C. 1324b(g)(2)(B)(iv)(II).	IRCA; Unfair immigration-related employment practices, second order (per individual discriminated against).	28 CFR 68.52(d)(1)(ix).	Min 3,563, Max 8,908.	Min 3,621, Max 9,054.	Min 3,695, Max 9,239.	Min 3,855, Max 9,639.	Min 3,901, Max 9,753.
8 U.S.C. 1324b(g)(2)(B)(iv)(III).	IRCA; Unfair immigration-related employment practices, subsequent order (per individual discriminated against).	28 CFR 68.52(d)(1)(x).	Min 5,345, Max 17,816.	Min 5,432, Max 18,107.	Min 5,543, Max 18,477.	Min 5,783, Max 19,277.	Min 5,851, Max 19,505.
8 U.S.C. 1324b(g)(2)(B)(iv)(IV).	IRCA; Unfair immigration-related employment practices, unfair documentary practices (per individual discriminated against).	28 CFR 68.52(d)(1)(xii).	Min 178, Max 1,782.	Min 181, Max 1,811.	Min 185, Max 1,848.	Min 193, Max 1,928.	Min 195, Max 1,951.
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(i).	Min 445, Max 3,563.	Min 452, Max 3,621.	Min 461, Max 3,695.	Min 481, Max 3,855.	Min 487, Max 3,901.
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(iii).	Min 3,563, Max 8,908.	Min 3,621, Max 9,054.	Min 3,695, Max 9,239.	Min 3,855, Max 9,639.	Min 3,901, Max 9,753.
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(ii).	Min 376, Max 3,005.	Min 382, Max 3,054.	Min 390, Max 3,116.	Min 407, Max 3,251.	Min 412, Max 3,289.
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(iv).	Min 3,005, Max 7,512.	Min 3,054, Max 7,635.	Min 3,116, Max 7,791.	Min 3,251, Max 8,128.	Min 3,289, Max 8,224.
<b>FBI</b>							
49 U.S.C. 30505(a) .....	National Motor Vehicle Title Identification System; Violation (per violation).	.....	1,591 .....	1,617 .....	1,650 .....	1,722 .....	1,742.
<b>Office of Justice Programs</b>							
34 U.S.C. 10231(d) .....	Confidentiality of information; State and Local Criminal History Record Information Systems—Right to Privacy Violation.	28 CFR part 2025.	27,500 .....	27,950 .....	28,520 .....	29,755 .....	30,107

<sup>1</sup> The figures set forth in this column represent the penalty as last adjusted by Department of Justice regulation on June 19, 2020.

<sup>2</sup> All figures set forth in this table are maximum penalties, unless otherwise indicated.

<sup>3</sup>Section 3729(a)(1) of Title 31 provides that any person who violates this section is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person. 31 U.S.C. 3729(a)(1). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to not less than 2 times the amount of damages which the Government sustains because of the act of that person. Id. The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

<sup>4</sup>Section 8706(a)(1) of Title 41 provides that the Federal Government in a civil action may recover from a person that knowingly engages in conduct prohibited by section 8702 of Title 41 a civil penalty equal to twice the amount of each kickback involved in the violation and not more than \$10,000 for each occurrence of prohibited conduct. 41 U.S.C. 8706(a)(1). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

<sup>5</sup>Section 216(b) of Title 18 provides that the civil penalty should be no more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. 18 U.S.C. 216(b). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under section 216(b).

<sup>6</sup>Section 2105(b) of Title 41 provides that the Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of Title 41. 41 U.S.C. 2105(b). Section 2105(b) further provides that on proof of that conduct by a preponderance of the evidence, an individual is liable to the Federal Government for a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct, and an organization is liable to the Federal Government for a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct. Id. The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

<sup>7</sup>The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8.

<sup>8</sup>Section 1956(b)(1) of Title 18 provides that whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of the value of the property, funds, or monetary instruments involved in the transaction; or \$10,000. 18 U.S.C. 1956(b)(1). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

<sup>9</sup>Section 842(c)(2)(C) of Title 21 provides that in addition to the penalties set forth elsewhere in the subchapter or subchapter II of the chapter, any business that violates paragraph (1) of subsection (a) of the section shall, with respect to the first such violation, be subject to a civil penalty of not more than \$250,000, but shall not be subject to criminal penalties under the section, and shall, for any succeeding violation, be subject to a civil fine of not more than \$250,000 or double the last previously imposed penalty, whichever is greater. 21 U.S.C. 842(c)(2)(C). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

<sup>10</sup>Section 856(d)(1) of Title 21 provides that any person who violates subsection (a) of the section shall be subject to a civil penalty of not more than the greater of \$250,000; or 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person. 21 U.S.C. 856(d)(1). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

<sup>11</sup>The SUPPORT for Patients and Communities Act, Public Law 115–271 was enacted October 24, 2018.

Dated: November 22, 2021.

**Merrick B. Garland,**  
*Attorney General.*

[FR Doc. 2021–26817 Filed 12–10–21; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 233

[Docket ID: DOD–2019–OS–0103]

RIN 0790–AK90

#### Federal Voting Assistance Program (FVAP)

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is finalizing policy for the Federal Voting Assistance Program (FVAP) based on a March 6, 2020, interim final rule. The FVAP assists overseas Service members and other overseas citizens with exercising their voting rights by serving as a critical resource to successfully register to vote.

**DATES:** This rule is effective January 12, 2022.

**FOR FURTHER INFORMATION CONTACT:** David Beirne, (571) 372–0727.

**SUPPLEMENTARY INFORMATION:**

#### Background

In the March 6, 2020, interim rule (85 FR 13045), DoD proposed amendments to:

- Include the United States Maritime Administration (MARAD) under agreement with the Department of Transportation and the United States Postal Service (USPS).

- Require DoD components to establish component-wide programs to communicate and disseminate voting information, with the goal of improving communication and clarity for the impacted population.

- Require Federal Agencies to enter into memorandums of understanding (MOU) with DoD to provide accurate, nonpartisan voting information and assistance to ensure military and overseas voters understand their voting rights, how to register and apply for an absentee ballot, and how to return their absentee ballot successfully.

#### Legal Basis

The FVAP administers the Uniformed and Overseas Citizens Absentee Act (UOCAVA) on behalf of the Secretary of Defense, as the Presidential designee under 52 U.S.C. 20301(a) and Executive Order (E.O.) 12642, “Designation of Secretary of Defense as Presidential Designee” (53 FR 21975, June 8, 1988).

United States citizens under UOCAVA include:

- Members and eligible family members of the Uniformed Services (Army, Navy, Marine Corps, Air Force, Space Force, Coast Guard, United States Public Health Service Commissioned

Corps, and National Oceanic and Atmospheric Administration Commissioned Corps).

- Members of the Merchant Marine.
- U.S. citizens residing outside of the United States.

Under 52 U.S.C. 20506, State voter registration agencies must provide individuals the opportunity to register to vote or to change their voter registration data when they apply for or receive services or assistance. The Secretary of Defense, under 10 U.S.C. 1566, must prescribe regulations to require the Military Services (Army, Navy, Air Force, and Marine Corps) to implement voting assistance programs that comply with DoD directives.

Finally, 52 U.S.C. 22301(c)(1) requires Government departments, agencies, and other entities, upon the Presidential designee’s request to distribute balloting materials and cooperate in carrying out UOCAVA.

Additional information regarding internal DoD processes related to this program is contained in DoD Instruction 1000.04, “Federal Voting Assistance Program (FVAP),” which is publicly available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100004p.pdf?ver=2017-12-01-105434-817>.

#### Discussion of Comments

Twelve comments were received on the interim rule. While one comment was not pertinent, a summary of the remaining 11 comments and the Department’s responses are below.