

directed the parties to address the foundational question of the Commission's legal authority to issue a rule mandating such a stay. I *strongly encourage* parties to address this question in their briefs, even though it was not specifically mentioned in the majority's order.

8. The Commission's failure to address the substance of the rehearing requests might be understandable if the order directing briefing had been issued earlier. Indeed, the Court in *Allegheny* suggested that it might be permissible for the Commission to provide for such supplemental briefing.¹⁰ However, that suggestion was offered in the context of the Court's discussion of a potential Commission order issued in connection with a timely ruling on rehearing within thirty days after a rehearing request.¹¹ Here, we are simply failing to perform our duties.

9. Finally, lest any reader of today's order overlook it, let's pause for a moment to consider the irony of what the Commission contemplates here. In the very same proceeding in which the Commission promulgated a rule specifically aimed at alleviating concerns that its tolling orders served only to "buy [the Commission] more time to act on a rehearing application and stall judicial review,"¹² the Commission attempts to buy more time by ordering further procedure after the statutory deadline to act on rehearing has passed and as judicial review is imminent, absent any modification in the meantime of the rule under review. I for one will be interested to see whether the D.C. Circuit countenances this action any more than it accepted the Commission's use of tolling orders for the very same purpose. Time will tell.

For these reasons, I respectfully dissent.

James P. Danly,
Commissioner.

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 575

Annual Adjustment of Civil Monetary Penalty To Reflect Inflation

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: In compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Act) and Office of Management and Budget (OMB) guidance, the National Indian Gaming Commission (NIGC or Commission) is amending its civil monetary penalty rule to reflect an annual adjustment for inflation in order to improve the penalty's effectiveness and maintain its deterrent effect. The Act provides that the new penalty level must apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES: This final rule is effective February 1, 2021.

FOR FURTHER INFORMATION CONTACT: Armando J. Acosta, Senior Attorney, Office of General Counsel, National Indian Gaming Commission, at (202) 632-7003; fax (202) 632-7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74). Beginning in 2017, the Act requires agencies to make annual inflationary adjustments to their civil monetary penalties by January 15th of each year, in accordance with annual OMB guidance.

II. Calculation of Annual Adjustment

In December of every year, OMB issues guidance to agencies to calculate the annual adjustment. According to OMB, the cost-of-living adjustment multiplier for 2021 is 1.01182, based on the Consumer Price Index for the month of October 2020, not seasonally adjusted.

Pursuant to this guidance, the Commission has calculated the annual adjustment level of the civil monetary penalty contained in 25 CFR 575.4 ("The Chairman may assess a civil fine, not to exceed \$53,524 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation . . ."). The 2021 adjusted level of the civil monetary penalty is \$54,157 (\$53,524 × 1.01182).

III. Regulatory Matters

Regulatory Planning and Review

This final rule is not a significant rule under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy or

will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients.

(4) This regulatory change does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Commission certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule makes annual adjustments for inflation.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

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

Takings

Under the criteria in Executive Order 12630, this final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable "taking." Thus, a takings implication assessment is not required.

¹⁰ See *Allegheny*, 964 F.3d at 16.

¹¹ See *id.*

¹² *Id.* at 9.

Federalism

Under the criteria in Executive Order 13132, this final rule has no substantial direct effect 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.

Civil Justice Reform

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation. It is written in clear language and contains clear legal standards.

Consultation With Indian Tribes

In accordance with the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments*, Executive Order 13175 (59 FR 22951, November 6, 2000), the Commission has determined that consultations with Indian gaming tribes is not practicable, as Congress has mandated that annual civil penalty adjustments in the Act be implemented no later than January 15th of each year.

Paperwork Reduction Act

This final rule does not affect any information collections under the Paperwork Reduction Act.

National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Information Quality Act

In developing this final rule, the Commission did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554).

Effects on the Energy Supply

This final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

The Commission is required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule that the Commission publishes must:

- (a) Be logically organized;
- (b) use the active voice to address readers directly;
- (c) use clear language rather than jargon;

(d) be divided into short sections and sentences; and

(e) use lists and tables wherever possible.

Required Determinations Under the Administrative Procedure Act

In accordance with the Act, agencies are to annually adjust civil monetary penalties without providing an opportunity for notice and comment, and without a delay in its effective date. Therefore, the Commission is not required to complete a notice and comment process prior to promulgation.

List of Subjects in 25 CFR Part 575

Administrative practice and procedure, Gaming, Indian lands, Penalties.

For the reasons set forth in the preamble, the Commission amends 25 CFR part 575 as follows:

PART 575—CIVIL FINES

- 1. The authority citation for part 575 continues to read as follows:

Authority: 25 U.S.C. 2705(a), 2706, 2713, 2715; and Sec. 701, Pub. L. 114-74, 129 Stat. 599.

§ 575.4 [Amended]

- 2. Amend the introductory text of § 575.4 by removing “\$53,524” and adding in its place “\$54,157”.

Dated: January 15, 2021.

E. Sequoyah Simermeyer,
Chairman.

Kathryn Isom-Clause,
Vice Chair.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2019-0028]

RIN 1625-AA01

Anchorage; Galveston Harbor, Bolivar Roads Channel, Galveston, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a 48-hour time limit in Anchorage Area (B) in Bolivar Roads near Galveston, Texas. Anchorage areas (A) and (C) in the Bolivar Roads Channel already have a 48-hour time limit, but anchorage (B) did not. This resulted in vessels remaining in

anchorage (B) for extended periods, blocking other vessels with pressing logistical needs, adversely affecting commerce and impacting navigational safety. Except when stress of weather makes sailing impractical or hazardous, this rule will prohibit vessels from anchoring in anchorage area (B) for more than 48 hours unless expressly authorized by the Captain of the Port Houston-Galveston.

DATES: This rule is effective March 3, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0028 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Sarah Rousseau or Lieutenant Junior Grade Ryan Gilbert, Sector Houston-Galveston Waterways Management Division, U.S. Coast Guard; telephone 281-464-4736/5800, email HoustonWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
HSC Lone Star Harbor Safety Committee
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
VTS Coast Guard Vessel Traffic Service
Houston/Galveston

II. Background Information and Regulatory History

On October 11, 2018, the Texas Lone Star Harbor Safety Committee requested a regulatory change to the Galveston Harbor Bolivar Roads Anchorage area (B). The HSC submitted a recommendation to the Sector Houston-Galveston Captain of the Port that Anchorage area (B) be regulated under the same 48-hour time limit as the adjacent Anchorage areas (A) and (C). The HSC developed a working group, the Anchorage Working Group, to assess the optimal ways to use the anchorage to facilitate safety and efficiency within the port.

On January 28, 2020, we published a notice of proposed rulemaking (85 FR 4919) that proposed to establish a 48-hour time limit in Anchorage Area (B) in Bolivar Roads near Galveston, Texas. The purpose of the propose rule was to align the Galveston Harbor Bolivar Roads Anchorage area (B) to the adjacent anchorages. This action is necessary to address port congestion