

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1700

Procedures for Disclosure of Records Pursuant to the Freedom of Information Act

Correction

In rule document 2023–15512, appearing on pages 48725 through 48731 in the issue of Friday, July 28, 2023, make the following correction:

§ 1700.9 Fees. [Corrected]

■ On page 48730, in the second column, on the eighteenth line, “manual searches for records” should read, “(b) With regard to manual searches for records”.

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Parts 207 and 326

RIN 0710–AB13

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is issuing this final rule to adjust its civil monetary penalties (CMP) under the Rivers and Harbors Appropriation Act of 1922 (RHA), the Clean Water Act (CWA), and the National Fishing Enhancement Act (NFEA) to account for inflation.

DATES: This final rule is effective on August 3, 2023.

FOR FURTHER INFORMATION CONTACT: For the RHA portion, please contact Mr. Paul Clouse at 202–761–4709 or by email at Paul.D.Clouse@usace.army.mil, or for the CWA and NFEA portion, please contact Mr. Matt Wilson 202–761–5856 or by email at Matthew.S.Wilson@usace.army.mil or access the U.S. Army Corps of Engineers Regulatory Home Page at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, codified at 28 U.S.C. 2461, note, as amended, requires agencies to annually adjust the level of CMP for inflation to improve their effectiveness and maintain their deterrent effect, as required by the Federal Civil Penalties Adjustment Act Improvements Act of 2015, Public Law 114–74, sec. 701,

November 2, 2015 (“Inflation Adjustment Act”).

With this rule, the new statutory maximum penalty levels listed in Table 1 will apply to all statutory civil penalties assessed on or after the effective date of this rule. Table 1 shows the calculation of the 2023 annual inflation adjustment based on the guidance provided by the Office of Management and Budget (OMB) (see December 15, 2022, Memorandum for the Heads of Executive Departments and Agencies, Subject: Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). The OMB provided to agencies the cost-of-living adjustment multiplier for 2023, based on the Consumer Price Index for All Urban Consumers (CPI-U) for the month of October 2022, not seasonally adjusted, which is 1.07745. Agencies are to adjust “the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment.” For 2023, agencies multiply each applicable penalty by the multiplier, 1.07745, and round to the nearest dollar. The multiplier should be applied to the most recent penalty amount, *i.e.*, the one that includes the 2022 annual inflation adjustment.

TABLE 1

Citation	Civil Monetary Penalty (CMP) amount established by law	2022 CMP amount in effect prior to this rulemaking	2022 Inflation adjustment multiplier	CMP Amount as of August 3, 2023
Rivers and Harbors Act of 1922 (33 U.S.C. 555).	\$2,500 per violation	\$6,270 per violation	1.07745	\$6,756 per violation.
CWA, 33 U.S.C. 1319(g)(2)(A)	\$10,000 per violation, with a maximum of \$25,000.	\$23,990 per violation, with a maximum of \$59,974.	1.07745	\$25,848 per violation, with a maximum of \$64,619.
CWA, 33 U.S.C. 1344(s)(4)	Maximum of \$25,000 per day for each violation.	Maximum of \$59,974 per day for each violation.	1.07745	Maximum of \$64,619 per day for each violation.
National Fishing Enhancement Act, 33 U.S.C. 2104(e).	Maximum of \$10,000 per violation	Maximum of \$26,269 per violation	1.07745	Maximum of \$28,304 per violation.

Section 4 of the Inflation Adjustment Act directs federal agencies to publish annual penalty inflation adjustments. In accordance with section 553 of the Administrative Procedures Act (APA), many rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. Section 4(b)(2) of the Inflation Adjustment Act further provides that each agency shall make the annual inflation adjustments “notwithstanding section 553” of the APA. According to the December 2022 OMB guidance issued to Federal agencies on the implementation of the

2023 annual adjustment, the phrase “notwithstanding section 553” means that, “the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.” Consistent with the language of the Inflation Adjustment Act and OMB’s implementation guidance, this rule is not subject to notice and opportunity for public comment or a delay in effective date. This rule adjusts the value of current statutory civil penalties to reflect and keep pace with the levels

originally set by Congress when the statutes were enacted, as required by the Inflation Adjustment Act. This rule will apply prospectively to penalty assessments beginning on the effective date of this final rule.

Regulatory Procedures Plain Language

In compliance with the principles in the President’s Memorandum of June 1, 1998, regarding plain language, this preamble is written using plain language. The use of “we” in this notice refers to the Corps and the use of “you” refers to the reader. We have also used