

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Civil Monetary Penalty Inflation Adjustment

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the level of civil monetary penalties (CMPs) in regulations maintained and enforced by the Merit Systems Protection Board (MSPB) with an annual adjustment under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) and Office of Management and Budget (OMB) guidance.

**DATES:** This final rule is effective on February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Everling, Acting Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419; Phone: (202) 653-7200; Fax: (202) 653-7130; or email: [mspb@mspb.gov](mailto:mspb@mspb.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Public Law 101-410, provides for the regular evaluation of CMPs by Federal agencies. Periodic inflationary adjustments of CMPs ensure that the consequences of statutory violations adequately reflect the gravity of such offenses and that CMPs are properly accounted for and collected by the Federal Government. In April 1996, the 1990 Act was amended by the Debt Collection Improvement Act of 1996 (the 1996 Act), Public Law 104-134, requiring Federal agencies to adjust their CMPs at least once every four years. However, because inflationary adjustments to CMPs were statutorily capped at ten percent of the maximum

penalty amount, but only required to be calculated every four years, CMPs in many cases did not correspond with the true measure of inflation over the preceding four-year period, leading to a decline in the real value of the penalty. To remedy this decline, the 2015 Act (section 701 of Pub. L. 114-74) requires agencies to adjust CMP amounts with annual inflationary adjustments through a rulemaking using a methodology mandated by the legislation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties.

A civil monetary penalty is “any penalty, fine, or other sanction” that: (1) “is for a specific amount” or “has a maximum amount” under Federal law; and (2) a Federal agency assesses or enforces “pursuant to an administrative proceeding or a civil action in the Federal courts.” 28 U.S.C. 2461 note.

The MSPB is authorized to assess CMPs pursuant to 5 U.S.C. 1215(a)(3) and 5 U.S.C. 7326 in disciplinary actions brought by the Special Counsel. The corresponding MSPB regulation for both CMPs is 5 CFR 1201.126(a). As required by the 2015 Act, and pursuant to guidance issued by the OMB, the MSPB is now making an annual adjustment for 2021, according to the prescribed formulas.

##### II. Calculation of Adjustment

The CMP listed in 5 U.S.C. 1215(a)(3) was established in 1978 with the enactment of the Civil Service Reform Act of 1978 (CSRA), Public Law 95-454, section 202(a), 92 Stat. 1121-30 (Oct. 13, 1978), and originally codified at 5 U.S.C. 1207(b). That CMP was last amended by section 106 of the Whistleblower Protection Enhancement Act of 2012, Public Law 112-199, 12 Stat. 1468 (Nov. 27, 2012), now codified at 5 U.S.C. 1215(a)(3), which provided for a CMP “not to exceed \$1,000.” The CMP authorized in 5 U.S.C. 7326 was established in 2012 by section 4 of the Hatch Act Modernization Act of 2012 (Hatch Act), Public Law 112-230, 126 Stat. 1617 (Dec. 28, 2012), which provided for a CMP “not to exceed \$1,000.” On March 4, 2020, the MSPB issued a final rule which increased the maximum CMP allowed under both 5 U.S.C. 1215(a)(3) and 5 U.S.C. 7326 to \$1,112 for the year 2020. *See* 85 FR 12723 (Mar. 4, 2020). This increase

reflected the annual increase for the year 2020 mandated by the 2015 Act.

On December 23, 2020, OMB issued guidance on calculating the annual inflationary adjustment for 2021. *See* Memorandum from Russell T. Vought, Dir., OMB, to Heads of Executive Departments and Agencies re: Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-21-10 (Dec. 23, 2020). Therein, OMB notified agencies that the annual adjustment multiplier for 2021, based on the Consumer Price Index for All Urban Consumers (CPI-U), is 1.01182 and that the 2021 annual adjustment amount is obtained by multiplying the 2020 penalty amount by the 2021 annual adjustment multiplier, and rounding to the nearest dollar. Therefore, the new maximum penalty under the CSRA and the Hatch Act is  $\$1,112 \times 1.01182 = \$1,125.14$ , which rounds to \$1,125.

##### III. Effective Date of Penalties

The revised CMP amounts will go into effect on February 2, 2021. All violations for which CMPs are assessed after the effective date of this rule will be assessed at the adjusted penalty level regardless of whether the violation occurred before the effective date.

##### IV. Procedural Requirements

###### A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), the MSPB has determined that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because Congress has specifically exempted agencies from these requirements when implementing the 2015 Act. The 2015 Act explicitly requires the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553, the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment. It is also in the public interest that the adjusted rates for CMPs under the CSRA and the Hatch Act become effective as soon as possible to maintain their effective deterrent effect.

*B. Regulatory Impact Analysis: E.O. 12866*

The MSPB has determined that this is not a significant regulatory action under E.O. 12866. Therefore, no regulatory impact analysis is required.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). As discussed above, the 2015 Act does not require agencies to first publish a proposed rule when adjusting CMPs within their jurisdiction. Thus, the RFA does not apply to this final rule.

*D. Paperwork Reduction Act*

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

*E. Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 5 CFR Part 1201**

Administrative practice and procedure, Civil rights, Government employees.

For the reasons set forth above, 5 CFR part 1201 is amended as follows:

**PART 1201—PRACTICES AND PROCEDURES**

■ 1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

**§ 1201.126 [Amended]**

■ 2. Section 1201.126 is amended in paragraph (a) by removing “\$1,112” and adding in its place “\$1,125”.

**Jennifer Everling,**

*Acting Clerk of the Board.*

**Editorial Note:** This document was received for publication by the Office of the Federal Register on January 12, 2021.

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**DEPARTMENT OF ENERGY**

**10 CFR Part 431**

**[EERE–2017–BT–TP–0047]**

**RIN 1904–AE18**

**Energy Conservation Program: Test Procedures for Small Electric Motors and Electric Motors**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** This document delays the effective date of a recently published final rule amending the test procedures for small electric motors and electric motors. DOE also seeks comment on any further delay of the effective date, including the impacts of such delay, as well comment on the legal, factual, or policy issues raised by the rule.

**DATES:** The effective dates of the final rule published January 4, 2021, at 86 FR 4, and the accompanying correction published January 15, 2021, at 86 FR 3747, are delayed to March 21, 2021. Written comments and information will be accepted on or before March 4, 2021.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

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**SUPPLEMENTARY INFORMATION:** On January 20, 2021, the Assistant to the President and Chief of Staff (“Chief of Staff”) issued a memorandum outlining the President’s plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy (“DOE”) hereby temporarily postpones the effective date of its final rule amending the test procedures for small electric motors and electric motors published in the **Federal Register** on January 4, 2021 (86 FR 4) and an accompanying correction document published in the **Federal Register** on January 15, 2021 (86 FR 3747). The

January 4, 2021 rule amends the test procedures for measuring the energy efficiency of small electric motors and electric motors. Consistent with the memorandum, DOE is temporarily postponing the effective date of the final rule by 60 days, starting from January 20, 2021. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff’s memorandum of January 20, 2021.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE’s implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. For these same reasons, DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d). DOE is, however, seeking comment on any further delay of the effective date, including the impacts of such delay, as well comment on the legal, factual, or policy issues raised by the rule.

**Signing Authority**

This document of the Department of Energy was signed on January 26, 2021, by John T. Lucas, Acting General Counsel, Office of the General Counsel, pursuant to delegated authority from the Acting Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in