



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1264 and 1271

RIN 2700-AE30

[Document Number NASA—17—071: Docket Number—NASA—2017--0004]

Implementation of the Federal Civil Penalties Inflation Adjustment Act and Adjustment of Amounts for 2017

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) has adopted as final the interim final rule concerning adjustments to civil monetary penalties within its jurisdiction for inflation. The interim rule was published on June 26, 2017, and applied a new methodology to calculate civil monetary penalties as mandated by the Federal Civil Penalties Adjustment Act Improvements Act of 2015, starting with an initial adjustment to previous unadjusted penalty amounts. The changes in the interim final rule made final by this rule are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and applicable as of August 25, 2017. In addition, this final rule provides for 2017 inflation adjustments of monetary penalties amounts required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: *Effective:* This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Applicable:* This final rule is applicable as of August 25, 2017.

FOR FURTHER INFORMATION CONTACT: Bryan R. Diederich, Office of the General Counsel, NASA Headquarters, telephone (202) 358-0216.

SUPPLEMENTARY INFORMATION:

I. Background

A. The June 26, 2017, Interim Rule

The Inflation Adjustment Act, as amended by the 2015 Act, requires Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016, and then by January 15 every year thereafter.¹ Agencies must make the initial 2016 adjustments through an interim final rulemaking published in the Federal Register.² Under the amended Act, any increase in a civil penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.³ The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

On June 26, 2017, NASA published its interim final rule providing for the initial adjustment called for under the Act.⁴ The public comment period interim final rule closed on August 24, 2016, and the rule became effective on August 25, 2017. NASA received no comments on the interim final rule.

B. 2017 Inflation Adjustment

After the initial adjustment, the Act requires agencies to make subsequent annual adjustments for inflation “notwithstanding section 553 of title 5, United States Code.” Section 553 refers to the

¹ See 28 U.S.C. 2461 note.

² The statute also provides that, for the initial 2016 adjustment, an agency may adjust a civil penalty by less than the otherwise required amount if (1) it determines, after publishing a notice of proposed rulemaking and providing an opportunity for comment, that increasing the civil penalty by the otherwise required amount would have a negative economic impact or that the social costs of increasing the civil penalty by the otherwise required amount outweigh the benefits, and (2) the Director of the Office of Management and Budget concurs with that determination. Inflation Adjustment Act section 4(c), *codified at* 28 UUSC 2461 note. NASA has chosen not to make use of this exception.

³ Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

⁴ 82 FR 28760.

Administrative Procedure Act, which might otherwise require a delay for advance notice and opportunity for public comments on future annual inflation adjustments. The first of these subsequent adjustments is for 2017. Because of a delay in publishing NASA’s 2016 inflation adjustments as an interim final rule, the time for making the 2017 adjustment was reached while NASA was in the process of publishing its 2016 adjustments. Accordingly, in adopting as final the interim rule published on June 26, 2017, NASA is adjusting the penalty amounts to reflect the 2017 adjustments required by law.

The 2017 annual adjustments are based on the percent change between the U.S. Department of Labor’s Consumer Price Index for All Urban Consumers (“CPI-U”) for the month of October preceding the date of the adjustment, and the CPI-U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2017 is 1.01636. Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.

II. The Final Rule

This rule makes final the interim final rule published June 26, 2017. In addition, this rule makes the required 2017 inflation adjustment. These adjusted amounts are reflected in the following table.

Law	Penalty Description	Penalty in June 26, 2017, Interim Rule	Penalty reflecting 2017 adjustment
Program Fraud Civil Remedies Act of 1986	Maximum Penalties for False Claims	\$10,781	\$10,957

Department of the Interior and Related Agencies Appropriations Act of 1989, P.L. 101-121, sec. 319	Minimum Penalty for use of appropriated funds to lobby or influence certain contracts	\$18,936	\$19,246
Department of the Interior and Related Agencies Appropriations Act of 1989, P.L. 101-121, sec. 319	Maximum Penalty for use of appropriated funds to lobby or influence certain contracts	\$189,361	\$192,459
Department of the Interior and Related Agencies Appropriations Act of 1989, P.L. 101-121, sec. 319	Minimum penalty for failure to report certain lobbying transactions	\$18,936	\$19,246
Department of the Interior and Related Agencies Appropriations Act	Maximum penalty for failure to report certain lobbying transactions	\$189,361	\$192,459

of 1989, P.L. 101- 121, sec. 319			
-------------------------------------	--	--	--

This rule codifies these civil penalty amounts by amending parts 1264 and 1271 of title 14 of the CFR.

III. Legal Authority and Effective Date

NASA issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,⁵ as amended by the Debt Collection Improvement Act of 1996,⁶ and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,⁷ which requires NASA to adjust the civil penalties within its jurisdiction for inflation according to a statutorily prescribed formula.

The Administrative Procedure Act (APA) generally requires an agency to publish a rule at least 30 days before its effective date.⁸ NASA’s publication of the June 26, 2017, interim final rule met this requirement. As explained above, the adjustments required for years subsequent to 2017 are not subject to the requirements of the Administrative Procedure Act. Moreover, the 2017 adjustments are made according to a statutory formula that does not provide for agency discretion. Accordingly, a delay in effectiveness of the 2017 adjustments is not required.

IV. Regulatory Requirements

Regulatory Flexibility Act

⁵ Public Law 101-410, 104 Stat. 890 (1990).

⁶ Public Law 104-134, section 31001(s)(1), 110 Stat. 1321, 1321-373 (1996).

⁷ Public Law 114-74, section 701, 129 Stat. 584, 599 (2015).

⁸ See 5 U.S.C. 533(d).

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.⁹

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,¹⁰ NASA reviewed this interim final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the interim final rule.

List of Subjects in 14 CFR Parts 1264 and 1271

Claims, Lobbying, Penalties.

For the reasons stated in the preamble, the National Aeronautics and Space Administration adopts as final the interim rule amending 14 CFR parts 1264 and 1271 which published on June 26, 2017, at 82 FR 28760, with the following changes:

PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

1. The authority citation for part 1264 continues to read as follows:

Authority: 31 U.S.C. 3809, 51 U.S.C. 20113(a).

§ 1264.102 [Amended]

2. In § 1264.102, paragraphs (a) and (b), remove the number “\$10,781” and add in its place the number “\$10,957.”

PART 1271—NEW RESTRICTIONS ON LOBBYING

3. The authority citation for part 1271 continues to read as follows:

⁹ 5 U.S.C. 603(a), 604(a).

¹⁰ 44 U.S.C. 3506.

Authority: Section 319, Pub. L. 101-121 (31 U.S.C. 1352); Pub. L. 97-258 (31 U.S.C. 6301 *et seq.*)

§ 1271.400 [Amended]

4. In § 1271.400:

- a. In paragraphs (a) and (b) remove the words “not less than \$18,936 and not more than \$189,361” and add in their place the words “not less than \$19,246 and not more than \$192,459.”
- b. In paragraph (e), remove the two occurrences of “\$18,936” and add in their place “\$19,246” and remove “189,361” and add in its place “\$192,459”.

Appendix A to Part 1271 [Amended]

5. In appendix A to part 1271, in the paragraph following paragraph (3) and in the last paragraph of the appendix, remove the words “not less than \$18,936 and not more than \$189,361” and add in their place the words “not less than \$19,246 and not more than \$192,459”.

Nanette J. Smith,

NASA Federal Register Liaison Officer.

[FR Doc. 2017-22847 Filed: 10/19/2017 8:45 am; Publication Date: 10/20/2017]