



GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-70

[FPMR Case 2024-01; Docket No. GSA-FPMR-2023-0027; Sequence No. 1]

RIN 3090-AK77

Civil Monetary Penalties Inflation Adjustment

AGENCY: The Office of the General Counsel, General Services Administration.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, this final rule applies the inflation adjustments for GSA's civil monetary penalties.

DATES: Effective January 15, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Pound, Assistant General Counsel, General Law Division (LG), General Services Administration, 1800 F Street, NW, Washington DC 20405. Telephone Number 202-501-1460.

SUPPLEMENTARY INFORMATION:

I. The Debt Collection Improvement Act of 1996

To maintain the remedial impact of civil monetary penalties (CMPs) and to promote compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of

1990 (Pub. L. 101-410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Sec. 701 of Pub. L. 114-74) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every year thereafter for these penalty amounts. The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments shall apply only to violations which occur after the date the increase takes effect, *i.e.*, thirty (30) days after date of publication in the *Federal Register*. Pursuant to the 2015 Act, agencies are required to adjust the level of the CMP with an initial "fix", and make subsequent annual adjustments for inflation. Catch up adjustments are based on the percent change between the Consumer Price Index for Urban Consumers (CPI-U) for the month of October for the year of the previous adjustment, and the October 2015 CPI-U. Annual inflation adjustments will be based on the percent change between the October CPI-U preceding the date of adjustment and the prior year's October CPI-U.

II. The Program Fraud Civil Remedies Act of 1986

Sections 6103 and 6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) set forth the Program Fraud Civil Remedies Act of 1986 (PFCRA). Specifically, this statute imposes a CMP and an assessment against any person who, with knowledge or reason to know, makes, submits, or presents a false, fictitious, or fraudulent claim or statement to the Government. The General Services Administration's regulations, published in the *Federal Register* (61 FR 246, December 20, 1996) and codified at 41 CFR part 105-70, currently set forth a CMP of up to \$13,000 for each false claim or statement made to the agency. Based on the penalty amount inflation factor calculation, derived from originally dividing the October 2022 CPI by the October 2023 CPI and making the CPI-based annual adjustment thereafter, after rounding, we are adjusting the maximum penalty amount for this CMP to \$13,400 for each false claim or statement made to the agency.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking, public comment, and effective date procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553 (APA). The APA, at 5 U.S.C. 559, provides that a subsequent statute may supersede the APA if it does so expressly. This rulemaking effectuates the statutory requirements set forth in section 4(b)(2) of

the 2015 Act, which provides that each agency shall make the annual inflation adjustments “notwithstanding section 553” of the APA. Furthermore, the APA provides an exception to the usual notice of proposed rulemaking, public comment, and effective date procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B) and 553(d)(3), good cause exists for dispensing with these procedures. The 2015 Act provides a non-discretionary cost-of-living formula for making the annual adjustment to the civil monetary penalties. GSA merely performs the ministerial task of calculating the amount of the adjustments. Therefore, under the clear terms of the APA and the language of the 2015 Act, this rule is not subject to notice, an opportunity for public comment, or a delayed effective date, and will be final and effective on January 15, 2024.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies 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).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of E.O. 12866 and has determined that it does not meet the criteria for a significant regulatory action and thus was not subject to review under Section 6(b) of E.O. 12866. As indicated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, for specific applicable CMPs. The great majority of individuals, organizations and entities addressed through these regulations do not engage in such prohibited conduct, and as a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited conduct in violation of the statute. As such, this final rule and the inflation adjustment contained therein should have no effect on Federal or state expenditures.

V. Congressional Review Act

The agency and the Office of Information and Regulatory Affairs, OMB have determined that this rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996

(codified at 5 U.S.C. 801-808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. GSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States.

VI. 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 explained above, GSA is not required to first publish a proposed rule here. Thus, the RFA does not apply to this final rule.

VII. Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 41 CFR Part 105-70

Administrative hearing, Claims, Program fraud.

Robin Carnahan,
Administrator.

Accordingly, 41 CFR part 105-70 is amended as set forth below:

**PART 105-70—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL
REMEDIES ACT OF 1986**

1. The authority citation for part 105-70 continues to read as follows:

Authority: 40 U.S.C. 121(c); 31 U.S.C. 3809.

§ 105-70.003 [Amended]

2. Amend § 105-70.003 by—

a. Removing from paragraph (a)(1)(iv) the amount “13,000” and adding “13,400” in its place; and

b. Removing from paragraph (b)(1)(ii) the amount “13,000” and adding “13,400” in its place.

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