



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 185

RIN 3206-AO79

Program Fraud Civil Remedies: Civil Monetary Penalty Inflation Adjustment

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: This rule adjusts the level of civil monetary penalties contained in U.S. Office of Personnel Management regulations implementing the Program Fraud Civil Remedies Act of 1986, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance.

DATES: *Effective date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Valerie Dew, Office of the General Counsel, Office of Personnel Management, 1900 E St NW, Washington, DC 20415, Valerie.Dew@opm.gov, (202) 606-1700.

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, 28 U.S.C. 2461 note) (“the 2015 Act”). The 2015 Act required agencies to: (1) adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rule, and (2) make subsequent annual adjustments for inflation not later than January 15 of each year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties. Since the passage of the

2015 Act, OPM has updated the agency's monetary penalties found in 5 CFR part 185 that implement the Program Fraud Civil Remedies Act of 1986.

This rule takes into account adjustments for the year 2025 based on inflation since the last adjustment. These calculations were made based on guidance contained in Office of Management and Budget Memorandum M-25-02:

| CFR Citation | Description of the penalty | 2024 Inflation Adjustment | 2025 Inflation Adjustment |
|---------------------|------------------------------------|----------------------------------|----------------------------------|
| 5 CFR 185.103(a) | Civil Penalty for False Claims | \$13,946 | \$14,308 |
| 5 CFR 185.103(f)(2) | Civil Penalty for False Statements | \$13,946 | \$14,308 |

This final rule is being issued without prior public notice or opportunity for public comments and is effective upon publication in the **Federal Register**. The 2015 Act required the agency to adjust penalties initially through an interim final rulemaking, which did not require the agency to complete a notice and comment process prior to promulgating the interim final rule. The amendments also explicitly required 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 and to delay the effective date). The formula used for adjusting the amount of a civil penalty is given by statute, with no discretion provided to OPM regarding the computation of the adjustments. OPM is charged only with performing ministerial computations to determine the amount of adjustment to the civil penalties due to increases in the Consumer Price Index for all Urban Consumers (CPI-U).

II. Calculation of Adjustment

The Office of Management and Budget (OMB) issues guidance annually on calculating adjustments. Under this guidance, OPM has calculated the annual adjustment to the penalties in 5 CFR part 185 that implement the Program Fraud Civil Remedies Act of 1986. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil

statute or regulation and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute or fees for services, licenses, permits, or other regulatory review.

The Office of Management and Budget Memorandum M-25-02 stated that the cost-of-living multiplier for calculating adjustments in 2025 was 1.02598. This multiplier is to be applied to the current level of civil monetary penalties for agencies (i.e., the penalty amount the agency updated and published for 2024). Under 5 CFR 185.103, when OPM's 2024 penalties of \$13,946 are multiplied by 1.02598 and rounded to the nearest dollar, the resulting penalty amounts are each \$14,308.

III. Procedural Requirements

Regulatory Review

OPM has examined the impact of this rule as required by Executive Orders 12866, 13563, and 14094, which 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). OMB has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. This rule is not an EO 14192 regulatory action because this rule is not significant under EO 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)) 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). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust

civil penalties annually. No discretion is allowed. Thus, the Director of OPM certifies that the RFA does not apply to this final rule.

Unfunded Mandate Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or Tribal governments in the aggregate, or on the private sector, in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$183 million. This regulation will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

E.O. 13132, Federalism

This rule does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

E.O. 12988, Civil Justice Reform

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Does not unduly burden the judicial system.
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Paperwork Reduction Act

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501-3521).

List of Subjects in 5 CFR Part 185

Administrative practice and procedure, Claims, Fraud, Penalties.

Jerson Matias,
Federal Register Liaison.

Accordingly, for the reasons set forth in the preamble, OPM amends 5 CFR part 185 as follows:

PART 185—PROGRAM FRAUD CIVIL REMEDIES

1. The authority citation for part 185 continues to read:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812.

§185.103 [Amended]

2. In § 185.103, amend paragraphs (a) introductory text and (f)(2) by removing “\$13,946” and adding “\$14,308” in its place.