



## RAILROAD RETIREMENT BOARD

20 CFR Part 356

RIN 3220-AB68

### **Civil Monetary Penalty Inflation Adjustment**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Interim final rule.

**SUMMARY:** As required by Section 701 of the Bipartisan Budget Act of 2015, entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Railroad Retirement Board (Board) hereby amends its regulations to provide for adjustments in the minimum and maximum amounts of civil monetary penalties under the Board's jurisdiction. The amendment will increase the amount of penalties to adjust for inflation since the Board last adjusted its penalty amounts, and will provide the formula to be used for required annual adjustments in the penalty amounts.

**DATES:** Effective August 1, 2016. Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by RIN 3220-AB68, by any of the following methods:

1. Internet – Send comments via e-mail to [SecretarytotheBoard@rrb.gov](mailto:SecretarytotheBoard@rrb.gov)
2. Fax – (312) 751-3336.
3. Mail – Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois, 60611-2092.

Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to RIN 3220-AB68.

Caution: You should be careful to include in your comments only information that you wish to make publicly available as comments are posted without change, with any personal information provided. The Board strongly urges you not to include in

your comments any personal information, such as Social Security numbers or medical information.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092, (312) 751-4945, TTD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** Section 701 of the Bipartisan Budget Act of 2015, Public Law 114-74 (Nov. 2, 2015), entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (Inflation Adjustment Act) to require agencies to publish regulations adjusting the amount of civil monetary penalties provided by law within the jurisdiction of the agency not later than July 1, 2016. The penalties authorized by the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* (PFCRA), and the False Claims Act provisions at 31 U.S.C. 3729(a), are within the Board's jurisdiction, and the Board accordingly publishes this interim final rule in compliance with the 2015 Act.

This interim final rule is being issued without prior public notice or opportunity for public comments. The 2015 Act's amendments to the Inflation Adjustment Act require the agency to adjust penalties initially through an interim final rulemaking, which does not require the agency to complete a notice and comment process prior to promulgating the interim final rule. The amendments also explicitly require 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). Additionally, the formula used for adjusting the amount of civil penalties is given by statute, with no discretion provided to the Board regarding the substance of the adjustments. The Board 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).

### **Prior Adjustment History**

The Board last adjusted the civil penalties under its jurisdiction effective October 23, 1996, pursuant to the Inflation Adjustment Act, when the maximum penalty under the PFCRA was adjusted from \$5,000 to \$5,500 and the minimum and maximum penalties under 31 U.S.C. 3729 were adjusted from \$5,000 to \$5,500

and from \$10,000 to \$11,000, respectively. While the formula used to calculate these adjustments initially yielded higher final penalty amounts, the Debt Collection Improvement Act of 1996, Public Law 104-134, limited the amount of these previous adjustments to no more than 10 percent of the penalty amount or range, as appropriate. Therefore, the penalties were increased by the statutory maximum of 10 percent. Prior to the October 23, 1996 adjustment, the Board last set or adjusted these penalty levels in 1986.

### **Initial Adjustment under the 2015 Act**

For the first adjustment made in accordance with the 2015 Act, the amount of the adjustment is calculated based on the percent change between the CPI-U for October of the last year in which penalties were previously adjusted (not including any adjustment made pursuant to the Inflation Adjustment Act before November 2, 2015), and the CPI-U for October 2015. The 10 percent cap on adjustments imposed by the Debt Collection Improvement Act of 1996 has been eliminated by the 2015 Act. Instead, the 2015 Act imposes a cap on the amount of this initial adjustment, such that the amount of the increase may not exceed 150 percent of the pre-adjustment penalty amount or range. As a result, the total penalty amount or range after the initial adjustment under the 2015 Act may not exceed 250 percent of the pre-adjustment penalty amount or range.

For purposes of the initial adjustment under the 2015 Act, the Board last set or adjusted the amount of civil penalties in 1986. The 1996 adjustment must be disregarded for these calculations because that adjustment was made pursuant to the Inflation Adjustment Act and subject to the 10 percent cap imposed by the Debt Collection Improvement Act of 1996. Between October 1986 and October 2015, the CPI-U has increased by 215.628 percent. The post-adjustment penalty amount or range is obtained by multiplying the pre-adjustment penalty amount or range by the percent change in the CPI-U over the relevant time period, and rounding to the nearest dollar. Therefore, the new, post-adjustment maximum penalty under the PFCRA is  $\$5,000 \times 2.15628 = \$10,781.40$ , which rounds to \$10,781. The new, post-adjustment minimum penalty under 31 U.S.C. 3729 is  $\$5,000 \times 2.15628 = \$10,781.40$ , which rounds to \$10,781. The new, post-adjustment maximum penalty under 31 U.S.C. §3729 is  $\$10,000 \times 2.15628 = \$21,562.80$ , which rounds to \$21,563. The new, post-adjustment penalties are less than 250 percent of the pre-adjustment penalties, so the limitation on the amount of the adjustment is not implicated. Therefore, the maximum penalty under the PFCRA for claims or statements made after August 1, 2016 will be \$10,781, and the minimum and maximum penalties for false claims under 31 U.S.C. 3729 will be \$10,781 and \$21,563 respectively.

## **Subsequent Annual Adjustments**

The 2015 Act also requires agencies to make annual adjustments to civil penalty amounts no later than January 15 of each year following the initial adjustment described above. The 2015 Act requires that these subsequent annual adjustments shall be made “notwithstanding section 553 of title 5, United States Code.” As noted earlier, this provision in the 2015 Act eliminates the requirement for public notice or opportunity for public comment prior to the publication of the final adjustment.

For subsequent adjustments made in accordance with the 2015 Act, the amount of the adjustment is based on the percent increase between the CPI-U for the month of October preceding the date of the adjustment and the CPI-U for the October one year prior to the October immediately preceding the date of the adjustment. If there is no increase, there is no adjustment of civil penalties. Therefore, if the Board adjusts penalties in January 2017, the adjustment will be calculated based on the percent change between the CPI-U for October 2016 (the October immediately preceding the date of adjustment) and October 2015 (the October one year prior to October 2016). The Board will publish the amount of these annual inflation

adjustments in the Federal Register no later than January 15 of each year, starting in 2017.

## **Regulatory Procedures**

### *Executive Order 12866, as Supplemented by Executive Order 13563*

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, no regulatory impact analysis is required.

### *Regulatory Flexibility Act*

The Board certifies that this rule would not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.



*Paperwork Reduction Act*

This interim final rule imposes no reporting or recordkeeping requirements subject to OMB clearance.

**List of Subjects in 20 CFR Part 356**

Claims, Penalties.

For the reasons set out in the preamble, the Railroad Retirement Board revises title 20, chapter II, subchapter E, part 356 of the Code of Federal Regulations to read as follows:

**PART 356 – CIVIL MONETARY PENALTY INFLATION ADJUSTMENT**

Sec.

356.1 Introduction.

356.2 Penalties under the Program Fraud Civil Remedies Act of 1986.

### 356.3 False claims.

Authority: 28 U.S.C. 2461; 31 U.S.C. 3729, 3809.

#### §356.1 Introduction.

(a) The Federal Civil Penalties Inflation Adjustment Act, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. 2461 note), requires that civil monetary penalties be adjusted on an annual basis by the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the adjustment exceeds the CPI-U for the month of October of the calendar year prior to the October preceding the adjustment, with final amounts rounded to the nearest dollar. That Act also requires a one-time catch up adjustment in the amount of the percentage by which the CPI-U for October 2015 exceeds the CPI-U for the month of October of the calendar year during which the amount of civil monetary penalty was established or adjusted under a provision of law other than the Federal Civil Penalties Inflation Adjustment Act.

(b) Other than adjustments under the Federal Civil Penalties Inflation Adjustment Act, the Board last established or adjusted civil monetary penalties in

1986. The CPI-U increased by 215.628 percent between October 1986 and October 2015.

(c) Imposition of the increased civil monetary penalties are limited to actions occurring after the effective date of the increases.

(d) The amount of the one-time catch up adjustment may not exceed 150 percent of the penalty amount or range as of November 2, 2015. The ten percent cap on increases imposed by the Debt Collection Improvements Act of 1996 was eliminated in the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act, and is no longer applicable.

§356.2 Penalties under the Program Fraud Civil Remedies Act of 1986.

(a) For claims or statements made on or before October 23, 1996, the maximum penalty which may be assessed under part 355 of this chapter is \$5,000.

(b) For claims or statements made after October 23, 1996, but before August 1, 2016, the maximum penalty which may be assessed under part 355 of this chapter is \$5,500.

(c) For claims or statements made on or after August 1, 2016, but before January 1, 2017, the maximum penalty which may be assessed under part 355 of this chapter is \$10,781.

(d) For claims or statements made on or after January 1, 2017, the maximum penalty which may be assessed under part 355 of this chapter is the larger of:

(1) The amount for the previous calendar year; or

(2) An amount adjusted for inflation, calculated by multiplying the amount for the previous calendar year by the percentage by which the CPI-U for the month of October preceding the current calendar year exceeds the CPI-U for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

(e) Notice of the maximum penalty which may be assessed under part 355 of this chapter for calendar years after 2016 will be published by the Board in the Federal Register on an annual basis on or before January 15 of each calendar year.

§356.3 False claims.

(a) For claims or statements made on or before October 23, 1996, the minimum penalty which may be assessed under 31 U.S.C. 3729 is \$5,000 and the maximum penalty is \$10,000.

(b) For claims or statements made after October 23, 1996, but before August 1, 2016, the minimum penalty which may be assessed under 31 U.S.C. 3729 is \$5,500 and the maximum penalty is \$11,000.

(c) For claims or statements made on or after August 1, 2016, but before January 1, 2017, the minimum penalty which may be assessed under 31 U.S.C. 3729 is \$10,781 and the maximum penalty is \$21,563.

(d) For claims or statements made on or after January 1, 2017, the minimum and maximum penalty amounts which may be assessed under 31 U.S.C. 3729 is the larger of:

(1) The amount for the previous calendar year; or

(2) An amount adjusted for inflation, calculated by multiplying the amount for the previous calendar year by the percentage by which the CPI-U for the month of October preceding the current calendar year exceeds the CPI-U for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

(e) Notice of the minimum and maximum penalty which may be assessed under 31 U.S.C. 3729 for calendar years after 2016 will be published by the Board in the Federal Register on an annual basis on or before January 15 of each calendar year.

By Authority of the Board

Martha P. Rico,  
Secretary to the Board.

[FR Doc. 2016-09959 Filed: 4/29/2016 8:45 am; Publication Date: 5/2/2016]