



**NATIONAL SCIENCE FOUNDATION**

**45 CFR Parts 672 and 681**

**Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015**

**RIN:** 3145-AA58

**AGENCY:** National Science Foundation.

**ACTION:** Interim final rule.

**SUMMARY:** The National Science Foundation (NSF or Foundation) is adjusting the maximum civil monetary penalties that may be imposed for violations of the Antarctic Conservation Act of 1978 (ACA), to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

**DATES:** Effective August 1, 2016.

**ADDRESSES:** You may submit comments, identified by RIN 3145-AA58. Comments should be submitted by any of the following methods:

1. Internet—Send comments via e-mail to [bgilansh@nsf.gov](mailto:bgilansh@nsf.gov).
2. Fax—(703) 292-9242

**FOR FURTHER INFORMATION CONTACT:** Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, at 703-292-8060, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

**SUPPLEMENTARY INFORMATION:** The 2015 Act requires agencies to: (1) adjust the level of civil monetary penalties with an initial “catch-up”

adjustment through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation. Inflation adjustments will be based on the percent change in the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the date of the adjustment, relative to the October CPI-U in the year of the previous adjustment. The only civil monetary penalties within NSF's jurisdiction are those authorized by the Antarctic Conservation Act of 1978 (ACA), 16 U.S.C. 2401, et seq., and the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801, et seq.

**Initial Adjustments under the ACA and PFCRA**

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 of the ACA's penalties under the 2015 Act, Congress last set or adjusted the amount of civil penalties in 1978. Between October 1978 and October 2015, the CPI-U has increased by 354.453 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 ACA for violations is  $\$5,000 \times 3.54453 = \$17,722.65$ , which rounds to \$17,723. The new, post-adjustment maximum penalty for knowing violations is  $\$10,000 \times 3.54453 = \$35,445.30$ , which rounds to \$35,445. The new, post-adjustment penalties are greater than 250 percent of the pre-adjustment penalties, so the limitation on the amount of the adjustment is implicated. Therefore, the maximum penalty under the ACA after August 1, 2016 will be \$16,250 ( $\$6,500 \times 2.5$ ) for violations and \$27,500 ( $\$11,000 \times 2.5$ ) for knowing violations.

For purposes of the initial adjustment under the 2015 Act, Congress last set or adjusted the amount of PFCRA civil penalties in 1986. 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 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.

#### **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. 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 NSF 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). NSF will publish the amount of these annual inflation adjustments in the Federal Register no later than January 15 of each year, starting in 2017.

***Public Participation***

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 NSF regarding the substance of the adjustments. NSF 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).

***Environmental Impact***

This interim final rule only makes conforming changes to the Foundation's regulations to reflect inflationary adjustments to its civil monetary penalties required by the 2015 Act.

***No Takings Implications***

NSF has determined that this interim final rule will not involve the taking of private property pursuant to E.O. 12630.

***Civil Justice Reform***

NSF has considered this interim final rule under E.O. 12988 on civil justice reform and determined the principles underlying and requirements of E.O. 12988 are not implicated.

***Federalism and Consultation and Coordination with Indian Tribal Governments***

NSF has considered this interim final rule under the requirements of E.O. 13132 on federalism and has determined that the interim final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Foundation has determined that no further assessment of federalism implications is necessary.

Moreover, NSF has determined that promulgation of this interim final rule does not require advance consultation with Indian Tribal officials as set forth in E.O. 13175, Consultation and Coordination with Indian Tribal Governments.

***Energy Effects***

NSF has reviewed this interim final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use and has determined that this final rule does not constitute a significant energy action as defined in the E.O.

***Regulatory Planning and Review***

This interim final rule has not been designated a "significant regulatory action," under Executive Order 12866. The interim final rule only makes inflation adjustments to NSF's civil monetary penalties.

***Unfunded Mandates***

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), NSF has assessed the effects of this interim final rule on State, local, and Tribal governments and the private sector. This interim final rule will not compel the expenditure of \$100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

***Controlling Paperwork Burdens on the Public***

This interim final rule does not contain any recordkeeping or reporting

requirements or other information collection requirements as defined in 5 CFR Part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and its implementing regulations at 5 CFR Part 1320 do not apply.

**List of Subjects**

**45 CFR Part 672**

Administrative practice and procedure, Antarctica.

**45 CFR Part 681**

Civil remedies; Program fraud.

For the reasons set out in the preamble, 45 CFR Parts 672 and 681 are amended as follows:

**PART 672—ENFORCEMENT AND HEARING PROCEDURES;**

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 2401 et seq., 28 USC 2461 note.

2. Revise § 672.24 to read as follows:

**§ 672.24 Maximum civil monetary penalties for violations.**

(a) For violations occurring prior to August 1, 2016, the maximum civil penalty is \$6500 for any violation and \$11,000 for knowing violations.

(b) For violations occurring after August 1, 2016, but before January 1, 2017, the maximum civil penalty is adjusted to \$16,250 for any violation and \$27,500 for knowing violations.

(c) For violations occurring on or after January 1, 2017, the maximum penalty, which may be assessed under Part 672 of the title, 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.

(d) Notice of the maximum penalty which may be assessed under Part 672 of this title for calendar years after 2016 will be published by the NSF in the Federal Register on an annual basis on or before January 15 of each calendar year.

**PART 681-PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS**

3. The authority citation for Part 681 continues to read as follows:

Authority: 31 U.S.C. 3801 et seq.

4. In § 681.3, add paragraphs (f) and (g) to read as follows:

**§ 681.3 What is the basis for the imposition of civil penalties and assessments?**

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(f) 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 681 of the title is \$10,781. For claims or statements made on or after January 1, 2017, the maximum penalty which may be assessed under Part 681 of the title 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.

(g) Notice of the maximum penalty, which may be assessed under Part 681 of this title for calendar years after 2016, will be published by NSF in the Federal Register on an annual basis on or before January 15 of each calendar year.

National Science Foundation.

Dated: June 16, 2016

Lawrence Rudolph,

General Counsel.

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