

Rules and Regulations

Federal Register

Vol. 85, No. 135

Tuesday, July 14, 2020

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 185

RIN 3206-AN39

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.

DATES: Effective August 13, 2020.

FOR FURTHER INFORMATION CONTACT:

Alan Miller, Office of the General Counsel, Office of Personnel Management, 1900 E St. NW, Washington, DC 20415, *Matthew.Donohue@opm.gov*, (202) 606-1700.

SUPPLEMENTARY INFORMATION:

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) (“the Act”). The Act required 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. The purpose of these adjustments is to maintain the deterrent effect of civil penalties. OPM has updated the agency’s monetary penalties annually since the passage of the 2015 Act.

This rule takes into account adjustments for the year 2020 based on inflation for that year. These calculations were made based on guidance contained in Office of Management and Budget Memorandum M-20-05:

CFR citation	Description of the penalty	Current penalty	2020 inflation adjustment
5 CFR 185.103(a)	Civil Penalty for False Claims	\$11,463	\$11,665
5 CFR 185.103(f)(2)	Civil Penalty for False Statements	11,463	11,665

This final rule is being issued without prior public notice or opportunity for public comments. The 2015 Act’s amendments to the Inflation Adjustment 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). The formula used for adjusting the amount of civil penalties 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).

Calculation of Adjustment

The Office of Management and Budget (OMB) issues guidance annually on calculating adjustments. Under this guidance, OPM has identified applicable civil monetary penalties and calculated the annual adjustment. 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 calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI-U.

Office of Management and Budget Memorandum M-20-05 stated that the cost of living multiplier for calculating adjustments in 2020 was 1.01764. This multiplier is to be applied to the current level of civil monetary penalties for agencies. When OPM’s current penalties of \$11,463 are multiplied by 1.01764, the resulting penalty amount is \$11,665.

Regulatory Impact Analysis: Executive Order 12866, as Supplemented by Executive Order 13563

OPM, with the concurrence of the Office of Management and Budget

(OMB), 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 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). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually. No discretion is allowed. Thus, the RFA does not apply to this final rule.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1532)

This rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

E.O. 12630, Takings

This rule does not have takings implications.

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 National 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.

E.O. 13175, Consultation With Indian Tribes

In accordance with Executive Order 13175, OPM has evaluated this rule and determined that it has no tribal implications.

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

List of Subjects in 5 CFR Part 185

Program fraud civil remedies, Claims, Penalties, Basis for civil penalties and assessments.

Office of Personnel Management.

Alexys Stanley,
Regulatory Affairs Analyst.

For the reasons set forth in the preamble, amend part 185 of title 5 of the Code of Federal Regulations as follows:

PART 185—PROGRAM FRAUD CIVIL REMEDIES: CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 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. Amend § 185.103 by:

■ a. In paragraph (a), revising “\$11,463” to read as “\$11,665”.

■ b. In paragraph (f)(2), revising “\$11,463” to read as “\$11,665”.

[FR Doc. 2020–13461 Filed 7–13–20; 8:45 am]

BILLING CODE 6325–48–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

[FNS–2019–0048]

RIN 0584–AE78

Food Distribution Program on Indian Reservations: Two-Year Administrative Funding Availability and Substantial Burden Waiver Signatory Requirement

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: Through this rulemaking, the U.S. Department of Agriculture’s (the Department or USDA) Food and Nutrition Service (FNS) is codifying a revised statutory requirement included in the Agriculture Improvement Act of 2018. The 2018 Farm Bill at section 4003 requires FDPIR administrative funds to remain available for obligation at the Indian Tribal Organization (ITO) and State agency level for a period of two Federal fiscal years. This provision was self-executing and went into effect upon enactment of the 2018 Farm Bill in Federal fiscal year (FY) 2019. This final rulemaking will also amend the Department’s previous implementation of the 2018 Farm Bill provision on the administrative match waiver requirement based on substantial burden.

DATES: This rule is effective July 14, 2020.

FOR FURTHER INFORMATION CONTACT:

Barbara Lopez, Program Analyst, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, Virginia 22314 or email Barbara.Lopez@usda.gov.

SUPPLEMENTARY INFORMATION:

- I. Discussion of Final Rule
- II. Two-Year Administrative Funding Availability
 - A. Background
 - B. Implementation Memorandum
 - C. Regulatory Changes to Two-Year Availability of Administrative Funding
- III. Revision of State Agency/ITO Administrative Match Waiver Requirements
 - A. Background
 - B. Comment Analysis and Regulatory Change
- IV. Procedural Matters

I. Discussion of Final Rule

In the following discussion and regulatory text, the term “State agency,” as defined at 7 CFR 253.2, is used to include ITOs authorized to administer FDPIR and the Food Distribution Program for Indian Households in Oklahoma (FDPIHO) in accordance with 7 CFR parts 253 and 254. The term “FDPIR” is used in this rulemaking to refer collectively to FDPIR and FDPIHO.

On December 20, 2018, the 2018 Farm Bill was signed into law. Section 4003 of the 2018 Farm Bill included FDPIR-specific provisions and modified Section 4(b) of the Food and Nutrition Act (FNA) (7 U.S.C. 2013(b)). This rule codifies the statutory requirement included in Section 4003(a)(3), which modifies Section 4(b)(7) of the FNA (7 U.S.C. 2013(b)(7)) to allow FDPIR administrative funds to remain available for obligation by the State agency for a period of two Federal fiscal years. Previously, funds made available to State agencies for the administration of FDPIR remained available for obligation for only one Federal fiscal year. This rule revises Federal regulation at 7 CFR 253.11(i) to conform to Section 4003(a)(3) of the 2018 Farm Bill. This provision is non-discretionary; accordingly, the Department is issuing this rule as a final rule and is not taking comments.

Section 4003 of the 2018 Farm Bill also modified Section 4(b)(4) of the FNA (7 U.S.C. 2013(b)(4)) to allow State agencies/ITOs to qualify for an administrative funding match waiver if their required match share would be a substantial burden. This provision was added to Federal regulations through a previous final rule with request for comments, *Food Distribution Program on Indian Reservations: Revisions to the Administrative Match Requirement* (84