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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Parts 1264 and 1271

[Document Number NASA-17-094: Docket Number-NASA-2017-0004]

**RIN 2700-AE30**

### Implementation of the Federal Civil Penalties Inflation Adjustment Act and Adjustment of Amounts for 2018

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) has adopted a final rule making inflation adjustments to civil monetary penalties within its jurisdiction. This final rule represents the annual 2018 inflation adjustments of monetary penalties.

These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** *Effective:* This final rule is effective January 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** Bryan R. Diederich, Office of the General Counsel, NASA Headquarters, telephone (202) 358-0216.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

The Inflation Adjustment Act, as amended by the 2015 Act, required Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016. Subsequent to the 2016 adjustment, Federal agencies were required to make an annual inflation adjustment by January 15 every year thereafter.<sup>1</sup> Agencies were required to make the initial 2016 adjustments through an interim final rulemaking published in the **Federal Register**.<sup>2</sup> Under the amended Act, any increase in a civil penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.<sup>3</sup> The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

On June 26, 2017, NASA published its interim final rule providing for the initial adjustment called for under the Act.<sup>4</sup> The public comment period interim final rule closed on August 24, 2016, and the rule became effective on August 25, 2017. On October 20, 2017, NASA adopted this interim rule as final.<sup>5</sup> In its final rule, NASA also amended the interim rule to incorporate the required annual adjustments for 2017.

Pursuant to the Act, adjustments to the civil penalties are required to be made by January 15 of each year. The annual adjustments are based on the percent change between the U.S. Department of Labor's Consumer Price Index for All Urban Consumers ("CPI-U") for the month of October preceding the date of the adjustment, and the CPI-U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2018 is 1.02041 percent. Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.

#### II. The Final Rule

This final rule makes the required adjustments to civil penalties for 2018. Applying the 2018 multiplier above, the adjustments for each penalty are summarized below.

Law	Penalty description	2017 penalty	Penalty adjusted for 2018
Program Fraud Civil Remedies Act of 1986 .....	Maximum Penalties for False Claims .....	\$10,957	\$11,181
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101-121, sec. 319.	Minimum Penalty for use of appropriated funds to lobby or influence certain contracts.	19,246	19,639
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101-121, sec. 319.	Maximum Penalty for use of appropriated funds to lobby or influence certain contracts.	192,459	196,387
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101-121, sec. 319.	Minimum penalty for failure to report certain lobbying transactions.	19,246	19,639
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101-121, sec. 319.	Maximum penalty for failure to report certain lobbying transactions.	192,459	196,387

This rule codifies these civil penalty amounts by amending parts 1264 and 1271 of title 14 of the CFR.

#### III. Legal Authority and Effective Date

NASA issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,<sup>6</sup> as amended by the Debt Collection Improvement Act

of 1996,<sup>7</sup> and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,<sup>8</sup> which requires NASA to adjust the civil penalties within its jurisdiction

<sup>1</sup> See 28 U.S.C. 2461 note.

<sup>2</sup> The statute also provides that, for the initial 2016 adjustment, an agency may adjust a civil penalty by less than the otherwise required amount if (1) it determines, after publishing a notice of proposed rulemaking and providing an opportunity for comment, that increasing the civil penalty by the otherwise required amount would have a negative economic impact or that the social costs

of increasing the civil penalty by the otherwise required amount outweigh the benefits, and (2) the Director of the Office of Management and Budget concurs with that determination. Inflation Adjustment Act section 4(c), *codified at* 28 U.S.C. 2461 note. NASA has chosen not to make use of this exception.

<sup>3</sup> Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

<sup>4</sup> 82 FR 28760.

<sup>5</sup> 82 FR 48760.

<sup>6</sup> Public Law 101-410, 104 Stat. 890 (1990).

<sup>7</sup> Public Law 104-134, section 31001(s)(1), 110 Stat. 1321, 1321-373 (1996).

<sup>8</sup> Public Law 114-74, section 701, 129 Stat. 584, 599 (2015).

for inflation according to a statutorily prescribed formula.

Section 553 of title 5 of the United States Code generally requires an agency to publish a rule at least 30 days before its effective date to allow for advance notice and opportunity for public comments.<sup>9</sup> After the initial adjustment for 2016, however, the Civil Penalties Inflation Adjustment Act requires agencies to make subsequent annual adjustments for inflation “notwithstanding section 553 of title 5, United States Code.” Moreover, the 2018 adjustments are made according to a statutory formula that does not provide for agency discretion. Accordingly, a delay in effectiveness of the 2018 adjustments is not required.

#### IV. Regulatory Requirements

##### *Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>10</sup>

##### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995,<sup>11</sup> NASA reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

##### List of Subjects in 14 CFR Parts 1264 and 1271

Claims, Lobbying, Penalties.

For the reasons stated in the preamble, the National Aeronautics and Space Administration is amending 14 CFR parts 1264 and 1271 as follows:

#### PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

- 1. The authority citation for part 1264 continues to read as follows:

**Authority:** 31 U.S.C. 3809, 51 U.S.C. 20113(a).

##### § 1264.102 [Amended]

- 2. In § 1264.102, remove the number “\$10,957” everywhere it appears and add in its place the number “\$11,181”.

#### PART 1271—NEW RESTRICTIONS ON LOBBYING

- 3. The authority citation for part 1271 continues to read as follows:

**Authority:** Section 319, Pub. L. 101–121 (31 U.S.C. 1352); Pub. L. 97–258 (31 U.S.C. 6301 *et seq.*)

##### § 1271.400 [Amended]

- 4. In § 1271.400:

- a. In paragraphs (a) and (b), remove the words “not less than \$19,246 and not more than \$192,459” and add in their place the words “not less than \$19,639 and not more than \$196,387”.
- b. In paragraph (e), remove the two occurrences of “\$19,246” and add in their place “\$19,639” and remove “\$192,459” and add in its place “\$196,387”.

##### Appendix A to Part 1271 [Amended]

- 5. In appendix A to part 1271:

- a. Remove the number “\$19,246” everywhere it appears and add in its place the number “\$19,639”.
- b. Remove the number “\$192,459” everywhere it appears and add in its place the number “\$196,387”.

**Nanette J. Smith,**

*NASA Federal Register Liaison Officer.*

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#### SECURITIES AND EXCHANGE COMMISSION

##### 17 CFR Part 230

[Release No. 33–10450; File No. S7–09–14]

RIN 3235–AL41

#### Treatment of Certain Communications Involving Security-Based Swaps That May Be Purchased Only by Eligible Contract Participants

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a rule under the Securities Act of 1933 (“Securities Act”) to provide that certain communications involving security-based swaps will not be deemed to constitute “offers” of such security-based swaps for purposes of Section 5 of the Securities Act. The final rule covers the publication or distribution of price quotes that relate to security-based swaps that may be purchased only by persons who are eligible contract participants (“covered SBS”) and are traded or processed on or through certain trading platforms. The final rule also covers a broker, dealer, or security-based swap dealer’s publication or distribution of written communications that discuss covered SBS and that meet the definition of “research report” in

Rule 139(d) under the Securities Act and certain other conditions.

**DATES:** Effective January 16, 2018.

**FOR FURTHER INFORMATION CONTACT:** Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551–3860, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

**SUPPLEMENTARY INFORMATION:** We are adopting Rule 135d under the Securities Act.<sup>1</sup>

#### I. Background and Summary

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) <sup>2</sup> into law. Title VII of the Dodd-Frank Act (“Title VII”) provides the Securities and Exchange Commission (“SEC” or the “Commission”) and the Commodity Futures Trading Commission (“CFTC”) with the authority to regulate over-the-counter derivatives. Under Title VII, the CFTC regulates “swaps,” the SEC regulates “security-based swaps,” and the CFTC and SEC jointly regulate “mixed swaps.” <sup>3</sup>

Title VII amended the Securities Act and the Securities Exchange Act of 1934 (“Exchange Act”) <sup>4</sup> to include “security-based swaps” in the definition of “security.” <sup>5</sup> As a result, “security-based swaps” are subject to the Securities Act and the Exchange Act and the rules and regulations thereunder. Section 5 of the Securities Act requires that any offer or sale of a security must either be registered under the Securities Act or be made pursuant to an exemption from registration.<sup>6</sup> As a result, counterparties

<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> Public Law 111–203, 124 Stat. 1376 (2010).

<sup>3</sup> The SEC and the CFTC, in consultation with the Board of Governors of the Federal Reserve System, jointly further defined the product and intermediary terms used in Title VII, including “swap,” “security-based swap,” “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant,” “eligible contract participant,” and “security-based swap agreement.” *See Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,”* Release No. 34–66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) (“Intermediary Definitions Adopting Release”), and *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Release No. 33–9338 (Jul. 18, 2012), 77 FR 48208 (Aug. 13, 2012) (“Product Definitions Adopting Release”).

<sup>4</sup> 15 U.S.C. 78a *et seq.*

<sup>5</sup> *See* Sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending Section 3(a)(10) of the Exchange Act [15 U.S.C. 78c(a)(10)] and Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)], respectively).

<sup>6</sup> *See* 15 U.S.C. 77e.

<sup>9</sup> *See* 5 U.S.C. 533(d).

<sup>10</sup> 5 U.S.C. 603(a), 604(a).

<sup>11</sup> 44 U.S.C. 3506.