

CLIENT ALERT

Up, Up, and Away – State Increases Potential Civil Penalties for Export and Other Administrative Violations

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In a [Final Rule](#) to be published tomorrow, the State Department has implemented the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) by increasing various civil penalties for violations within its jurisdiction including for export control violations and such administrative actions as Program Fraud and Byrd Amendment:

- Raising from \$500,000 to \$1,094,010 per violation the civil penalty for Arms Export Control Act (AECA) violations.
- Raising from \$500,000 to \$795,445 per violation the civil penalty for violations of the Feingold Amendment prohibiting incentive payments related to Offset Agreements.
- Raising from \$500,000 to \$946,805 per violation the civil penalty for violations of the AECA § 40 prohibition on facilitating acquisition of munition items by countries designated by State as supporters of terrorism.
- Raising the civil penalty for violations of the Chemical Weapons Convention Implementation Act to \$36,256 per inspection related violation and \$7,251 for recordkeeping violations.
- Raising the range of civil penalties for violations of the Program Fraud Civil Remedies Act to a minimum of \$10,781 per false claim up to a maximum of \$323,442 per false claim.
- Raising the range of civil penalties for violations of Byrd Amendment restrictions on recipients of federal contracts, grants and loans on use of appropriated funds for lobbying to a minimum of \$18,936 to a maximum of \$189,361 for both improper expenditures and failures to disclose.

The various increases were calculated based upon OMB guidance for the inflation that has occurred since the last adjustment for each specific civil penalty, and accordingly some doubled while others increased by a lesser amount. Going forward, State will make annual inflationary adjustments no later than January 15 of each year, as also required under the 2015 Act.

The new civil penalties are effective August 1, 2016 and purport to be applicable to any penalty assessment after that date regardless of when the violation actually occurred. Significantly, in a notice regarding the changes published on its website, State confirmed that the 2015 Act does not impede its discretion to assess civil monetary penalties “lower than the maximum amount should circumstances warrant,” meaning State can continue to consider voluntary disclosure of a violation as a mitigating factor.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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