

When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

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Signed on the 18th day of December, 2020, in Washington, DC.

Eugene Scalia,

Secretary, Department of Labor.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 19

[FRL-10018-13-OECA]

Civil Monetary Penalty Inflation Adjustment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of the maximum (and minimum) statutory civil monetary penalty amounts under the statutes the EPA administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 ("the 2015 Act"). The 2015 Act prescribes a formula for annually adjusting the statutory maximum (and minimum) amount of civil monetary penalties to reflect inflation, maintain the deterrent effect of statutory civil monetary penalties, and promote compliance with the law. The rule does not establish specific civil monetary penalty amounts the EPA may seek in particular cases, as appropriate given the facts of particular cases and applicable agency penalty policies. The EPA's civil penalty policies, which guide enforcement personnel on how to exercise the EPA's discretion within statutory penalty authorities, take into account a number of fact-specific considerations, *e.g.*, the seriousness of the violation, the violator's good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator's ability to pay.

DATES: This final rule is effective December 23, 2020.

FOR FURTHER INFORMATION CONTACT: David Smith-Watts, Office of Civil

Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2241A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone number: (202) 564-4083; *smith-watts.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1996, Federal agencies have been required to issue regulations adjusting for inflation the statutory civil monetary penalties¹ that can be imposed under the laws administered by that agency. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA), required agencies to review their statutory civil monetary penalties every four years, and to adjust the statutory civil monetary penalty amounts for inflation if the increase met the DCIA's adjustment methodology. In accordance with the DCIA, the EPA reviewed and, as appropriate, adjusted the civil monetary penalty levels under each of the statutes the agency implements in 1996 (61 FR 69360), 2004 (69 FR 7121), 2008 (73 FR 75340), and 2013 (78 FR 66643).

The 2015 Act² required each Federal agency to adjust the level of statutory civil monetary penalties under the laws implemented by that agency with an initial "catch-up" adjustment through an interim final rulemaking. The 2015 Act also required Federal agencies, beginning on January 15, 2017, to make subsequent annual adjustments for inflation. Section 4 of the 2015 Act requires each Federal agency to publish these adjustments by January 15 of each year. The purpose of the 2015 Act is to maintain the deterrent effect of civil monetary penalties by translating originally enacted statutory civil penalty amounts to today's dollars and rounding statutory civil penalties to the nearest dollar.

As required by the 2015 Act, the EPA issued a catch-up rule on July 1, 2016, which was effective August 1, 2016 (81 FR 43091). The EPA has made four

annual adjustments since then: On January 12, 2017, effective on January 15, 2017 (82 FR 3633); on January 10, 2018, effective on January 15, 2018 (83 FR 1190); on February 6, 2019, effective February 6, 2019 (84 FR 2056), and issued a subsequent correction on February 25, 2019 (84 FR 5955); and on January 13, 2020, effective the same day (85 FR 1751). This rule implements the fifth annual adjustment mandated by the 2015 Act.

The 2015 Act provides a formula for calculating the adjustments. Each statutory maximum and minimum³ civil monetary penalty as currently adjusted is multiplied by the cost-of-living adjustment multiplier, which is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2020 exceeds the CPI-U for the month of October 2019.⁴

With this rule, the new statutory maximum and minimum penalty levels listed in the third column of Table 1 of 40 CFR 19.4 will apply to all civil monetary penalties assessed on or after December 23, 2020, for violations that occurred after November 2, 2015, the date the 2015 Act was enacted. The former maximum and minimum statutory civil monetary penalty levels, which are in the fourth column of Table 1 to 40 CFR 19.4, will now apply only to violations that occurred after November 2, 2015, where the penalties were assessed on or after January 13, 2020, but before December 23, 2020. The statutory civil monetary penalty levels that apply to violations that occurred on or before November 2, 2015, are codified at Table 2 to 40 CFR 19.4. The fifth column of Table 1 and the seventh column of Table 2 display the statutory civil monetary penalty levels as originally enacted.

The formula for determining the cost-of-living or inflation adjustment to

³ Under Section 3(2)(A) of the 2015 Act, "civil monetary penalty" means "a specific monetary amount as provided by Federal law"; or "has a maximum amount provided for by Federal law." EPA-administered statutes generally refer to statutory maximum penalties, with the following exceptions: Section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), refers to a minimum penalty of "not less than \$100,000 . . ."; Section 104B(d)(1) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1414b(d)(1), refers to an exact penalty of \$600 "[f]or each dry ton (or equivalent) of sewage sludge or industrial waste dumped or transported by the person in violation of this subsection in calendar year 1992. . ."; and Section 325(d)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11045(d)(1), refers to an exact civil penalty of \$25,000 for each frivolous trade secret claim.

⁴ Current and historical CPI-U's can be found on the Bureau of Labor Statistics' website here: <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202010.pdf>.

¹ The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. 2461 note, defines "civil monetary penalty" as any penalty, fine, or other sanction that—(1)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

² The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74) was signed into law on November 2, 2015, and further amended the Federal Civil Penalties Inflation Adjustment Act of 1990.

statutory civil monetary penalties consists of the following steps:

Step 1: The cost-of-living adjustment multiplier for 2021 is the percentage by which the CPI-U of October 2020 (260.388) exceeds the CPI-U for the month of October 2019 (257.346), which is 1.01182.⁵ Multiply 1.01182 by the current penalty amount. This is the raw adjusted penalty value.

Step 2: Round the raw adjusted penalty value. Section 5 of the 2015 Act states that any adjustment shall be rounded to the nearest multiple of \$1. The result is the final penalty value for the year.

II. The 2015 Act Requires Federal Agencies To Publish Annual Penalty Inflation Adjustments Notwithstanding Section 553 of the Administrative Procedure Act

Pursuant to section 4 of the 2015 Act, each Federal agency is required to publish adjustments no later than January 15 each year. In accordance with section 553 of the Administrative Procedure Act (APA), most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, section 4(b)(2) of the 2015 Act provides that each agency shall make the annual inflation adjustments “notwithstanding section 553” of the APA. Consistent with the language of the 2015 Act, this rule is not subject to notice and an opportunity for public comment and will be effective on December 23, 2020.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to OMB for review.

⁵ Section 5(b) of the 2015 Act provides that the term “cost-of-living adjustment” means the percentage (if any) for each civil monetary penalty by which—

(1) the Consumer Price Index for the month of October preceding the date of the adjustment, exceeds

(2) the Consumer Price Index for the month of October 1 year before the month of October referred to in paragraph (2).

Because the CPI-U for October 2020 is 260.388 and the CPI-U for October 2019 is 257.346, the cost-of-living multiplier is 1.01182 (260.388 divided by 257.346).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule merely increases the level of statutory civil monetary penalties that can be imposed in the context of a Federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. Because the 2015 Act directs Federal agencies to publish this rule notwithstanding section 553 of the APA, this rule is not subject to notice and comment requirements or the RFA.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is required by the 2015 Act, without the exercise of any policy discretion by the EPA. This action also imposes no enforceable duty on any state, local or tribal governments or the private sector. Because the calculation of any increase is formula-driven pursuant to the 2015 Act, the EPA has no policy discretion to vary the amount of the adjustment.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have a substantial direct effect 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175.

This rule merely reconciles the real value of current statutory civil monetary penalty levels to reflect and keep pace with the levels originally set by

Congress when the statutes were enacted or amended. The calculation of the increases is formula-driven and prescribed by statute, and the EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, this rule will not have a substantial direct effect on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

The rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. Rather, this action is mandated by the 2015 Act, which prescribes a formula for adjusting statutory civil penalties on an annual basis to reflect inflation.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding

that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA finds that the APA's notice and comment rulemaking procedures are unnecessary because the 2015 Act directs Federal agencies to publish their annual penalty inflation adjustments "notwithstanding section 553 [of the APA]."

List of Subjects in 40 CFR Part 19

Environmental protection,
Administrative practice and procedure,
Penalties.

Andrew Wheeler,
Administrator.

For the reasons set out in the preamble, the EPA amends title 40, chapter I, part 19 of the Code of Federal Regulations as follows:

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 19 continues to read as follows:

Authority: Public Law 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Public Law 104–134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Public Law 105–362, title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293; Public Law 114–74, title VII, sec. 701(b), Nov. 2, 2015, 129 Stat. 599.

■ 2. Revise § 19.2 to read as follows:

§ 19.2 Effective date.

(a) The statutory civil monetary penalty levels set forth in the third column of Table 1 of § 19.4 apply to all violations which occur or occurred after November 2, 2015, where the penalties are assessed on or after December 23, 2020. The statutory civil monetary penalty levels set forth in the fourth column of Table 1 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed on or after January 13, 2020, but before December 23, 2020.

(b) The statutory monetary penalty levels in the third column of Table 2 to § 19.4 apply to all violations which occurred after December 6, 2013 through November 2, 2015, and to violations occurring after November 2, 2015, where penalties were assessed before August 1, 2016. The statutory civil monetary penalty levels set forth in the fifth column of Table 2 of § 19.4 apply to all violations which occurred after January 12, 2009 through December 6, 2013. The statutory civil monetary penalty levels set forth in the sixth column of Table 2 of § 19.4 apply to all violations which occurred after March 15, 2004 through January 12, 2009. The statutory civil monetary penalty levels set forth in the sixth

column of Table 2 of § 19.4 apply to all violations which occurred after January 30, 1997 through March 15, 2004.

3. Revise the section heading, introductory text, and Table 1 of § 19.4 to read as follows:

§ 19.4 Statutory civil monetary penalties, as adjusted for inflation, and tables.

Table 1 of this section sets out the statutory civil monetary penalty provisions of statutes administered by the EPA, with the third column setting out the latest operative statutory civil monetary penalty levels for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020. The fourth column displays the operative statutory civil monetary penalty levels where penalties were assessed on or after January 13, 2020, but before December 23, 2020. Table 2 of this section sets out the statutory civil monetary penalty provision of statutes administered by the EPA, with the operative statutory civil monetary penalty levels, as adjusted for inflation, for violations that occurred on or before November 2, 2015, and for violations that occurred after November 2, 2015, where penalties were assessed before August 1, 2016.

TABLE 1 OF § 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil monetary penalties for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020	Statutory civil monetary penalties for violations that occurred after November 2, 2015, where penalties were assessed on or after January 13, 2020, but before December 23, 2020	Statutory civil monetary penalties, as enacted
7 U.S.C. 136(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	\$20,528	\$20,288	\$5,000
7 U.S.C. 136(a)(2) ¹	FIFRA	3,011/1,940/3,011	2,976/1,917/2,976	1,000/500/1,000
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	41,056	40,576	25,000
15 U.S.C. 2647(a)	TSCA	11,803	11,665	5,000
15 U.S.C. 2647(g)	TSCA	9,753	9,639	5,000
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	11,803	11,665	5,000
31 U.S.C. 3802(a)(2)	PFCRA	11,803	11,665	5,000
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA)	56,460	55,800	25,000
33 U.S.C. 1319(g)(2)(A)	CWA	22,584/56,460	22,320/55,800	10,000/25,000
33 U.S.C. 1319(g)(2)(B)	CWA	22,584/282,293	22,320/278,995	10,000/125,000
33 U.S.C. 1321(b)(6)(B)(i)	CWA	19,505/48,762	19,277/48,192	10,000/25,000
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	19,505/243,808	19,277/240,960	10,000/125,000
33 U.S.C. 1321(b)(7)(A)	CWA	48,762/1,951	48,192/1,928	25,000/1,000
33 U.S.C. 1321(b)(7)(B)	CWA	48,762	48,192	25,000
33 U.S.C. 1321(b)(7)(C)	CWA	48,762	48,192	25,000
33 U.S.C. 1321(b)(7)(D)	CWA	195,047/5,851	192,768/5,783	100,000/3,000
33 U.S.C. 1414b(d)(1)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	1,299	1,284	600
33 U.S.C. 1415(a)	MPRSA	205,276/270,784	202,878/267,621	50,000/125,000
33 U.S.C. 1901 note (see 1409(a)(2)(A))	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO).	14,966/37,412	14,791/36,975	10,000/25,000
33 U.S.C. 1901 note (see 1409(a)(2)(B))	CACSO	14,966/187,059	14,791/184,874	10,000/125,000
33 U.S.C. 1901 note (see 1409(b)(1))	CACSO	37,412	36,975	25,000
33 U.S.C. 1908(b)(1)	ACT TO PREVENT POLLUTION FROM SHIPS (APPS).	76,764	75,867	25,000

TABLE 1 OF § 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Environmental statute	Statutory civil monetary penalties for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020	Statutory civil monetary penalties for violations that occurred after November 2, 2015, where penalties were assessed on or after January 13, 2020, but before December 23, 2020	Statutory civil monetary penalties, as enacted
33 U.S.C. 1908(b)(2)	APPS	15,352	15,173	5,000
42 U.S.C. 300g-3(b)	SAFE DRINKING WATER ACT (SDWA)	59,017	58,328	25,000
42 U.S.C. 300g-3(g)(3)(A)	SDWA	59,017	58,328	25,000
42 U.S.C. 300g-3(g)(3)(B)	SDWA	11,803/41,120	11,665/40,640	5,000/25,000
42 U.S.C. 300g-3(g)(3)(C)	SDWA	41,120	40,640	25,000
42 U.S.C. 300h-2(b)(1)	SDWA	59,017	58,328	25,000
42 U.S.C. 300h-2(c)(1)	SDWA	23,607/295,088	23,331/291,641	10,000/125,000
42 U.S.C. 300h-2(c)(2)	SDWA	11,803/295,088	11,665/291,641	5,000/125,000
42 U.S.C. 300h-3(c)	SDWA	20,528/43,792	20,288/43,280	5,000/10,000
42 U.S.C. 300i(b)	SDWA	24,674	24,386	15,000
42 U.S.C. 300i-1(c)	SDWA	143,621/1,436,220	141,943/1,419,442	100,000/1,000,000
42 U.S.C. 300j(e)(2)	SDWA	10,263	10,143	2,500
42 U.S.C. 300j-4(c)	SDWA	59,017	58,328	25,000
42 U.S.C. 300j-6(b)(2)	SDWA	41,120	40,640	25,000
42 U.S.C. 300j-23(d)	SDWA	10,832/108,315	10,705/107,050	5,000/50,000
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992.	18,364	18,149	10,000
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972	38,805	38,352	10,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	102,638	101,439	25,000
42 U.S.C. 6928(c)	RCRA	61,820	61,098	25,000
42 U.S.C. 6928(g)	RCRA	76,764	75,867	25,000
42 U.S.C. 6928(h)(2)	RCRA	61,820	61,098	25,000
42 U.S.C. 6934(e)	RCRA	15,352	15,173	5,000
42 U.S.C. 6973(b)	RCRA	15,352	15,173	5,000
42 U.S.C. 6991e(a)(3)	RCRA	61,820	61,098	25,000
42 U.S.C. 6991e(d)(1)	RCRA	24,730	24,441	10,000
42 U.S.C. 6991e(d)(2)	RCRA	24,730	24,441	10,000
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	102,638	101,439	25,000
42 U.S.C. 7413(d)(1)	CAA	48,762/390,092	48,192/385,535	25,000/200,000
42 U.S.C. 7413(d)(3)	CAA	9,753	9,639	5,000
42 U.S.C. 7524(a)	CAA	48,762/4,876	48,192/4,819	25,000/2,500
42 U.S.C. 7524(c)(1)	CAA	390,092	385,535	200,000
42 U.S.C. 7545(d)(1)	CAA	48,762	48,192	25,000
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	59,017	58,328	25,000
42 U.S.C. 9606(b)(1)	CERCLA	59,017	58,328	25,000
42 U.S.C. 9609(a)(1)	CERCLA	59,017	58,328	25,000
42 U.S.C. 9609(b)	CERCLA	59,017/177,053	58,328/174,985	25,000/75,000
42 U.S.C. 9609(c)	CERCLA	59,017/177,053	58,328/174,985	25,000/75,000
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA).	59,017	58,328	25,000
42 U.S.C. 11045(b)(1)(A)	EPCRA	59,017	58,328	25,000
42 U.S.C. 11045(b)(2)	EPCRA	59,017/177,053	58,328/174,985	25,000/75,000
42 U.S.C. 11045(b)(3)	EPCRA	59,017/177,053	58,328/174,985	25,000/75,000
42 U.S.C. 11045(c)(1)	EPCRA	59,017	58,328	25,000
42 U.S.C. 11045(c)(2)	EPCRA	23,607	23,331	10,000
42 U.S.C. 11045(d)(1)	EPCRA	59,017	58,328	25,000
42 U.S.C. 14304(a)(1)	MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	16,450	16,258	10,000
42 U.S.C. 14304(g)	BATTERY ACT	16,450	16,258	10,000

¹ Note that 7 U.S.C. 136(a)(2) contains three separate statutory maximum civil penalty provisions. The first mention of \$1,000 and the \$500 statutory maximum civil penalty amount were originally enacted in 1978 (Pub. L. 95-396), and the second mention of \$1,000 was enacted in 1972 (Pub. L. 92-516).

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