Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 6, 1996.

Regulatory Process

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind the private sector to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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SUPPLEMENTARY INFORMATION:

I. The Debt Collection Improvement Act of 1996

In an effort to maintain the remedial impact of civil money penalties (MPs) and promote compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101–410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every four years thereafter for these penalty amounts.

The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (i) should apply only to the violations that occur after October 23, 1996—the Act’s effective date—and (ii) should not exceed 10 percent of the penalty indicated. In addition to those penalties that fall under the Internal Revenue Code of 1986, the Tariff Act of 1930 and the Occupational Safety and Health Act of 1970, CMPs that come under the Social Security Act are specifically exempt from the requirements of this Act.

Method of calculation

Under the Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum CMP amount per violation by the cost-of-living adjustment. The “cost-of-living” adjustment is defined as the percentage of each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year in which the amount of the CMP was last set or adjusted in accordance with the law. Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Act.

II. OIG Civil Money Penalties Affected by this Adjustment

While the vast majority of penalty sanctions delegated to the OIG derive from CMP authorities set forth under the Social Security Act, and therefore are exempt from these inflation adjustment calculations, there are several penalty authorities, within our jurisdiction, as described below, for which adjustments are required and are now being made.

The Health Care Quality Improvement Act of 1986

In 1986, sections 421(c) and 427(b)(2) of the Health Care Quality Improvement Act (HCQIA) of 1986 (Title IV of Pub. L. 99–660) established OIG CMP authorities for failure to report medical malpractice payment information to the National Practitioner Data Bank, and for breaching the confidentiality of information reported to the Data Bank established to collect and disseminate such information. To assure the timely collection and reporting of medical malpractice payments to the Data Bank, the final regulations—published in the Federal Register (56 FR 28492, June 21, 1991) and codified at 42 CFR part 1003—set forth a CMP of up to $4,100,000 against any person or entity that fails to report each such payment in a timely and complete manner. In addition, to protect the confidentiality of information reported to the Data Bank under these provisions, the final regulations also established a CMP of up to $10,000 against any person or entity who improperly discloses information reported to the Data Bank.

Based on the penalty amount inflation factor calculation, derived from dividing the June 1995 CPI by the CPI from June 1986, after rounding and the 10 percent maximum ceiling, we are adjusting the maximum penalty amount for the two CMPs under the HCQIA to $11,000 per violation.

The Program Fraud Civil Remedies Act of 1986

In 1986, sections 6103 and 6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–501) set forth the Program Fraud Civil Remedies Act (PFCRA) of 1986. Specifically, this authority established a CMP and an assessment against any individual who—while knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim or statement to the Department. The Department’s regulations—published in the Federal Register (53 FR 11656, April 8, 1988) and codified at 45 CFR part 79—set forth a CMP of up to $5,000 for each false claim or statement made to the Department.

Based on the penalty amount inflation factor calculation, derived from dividing the June 1995 CPI by the CPI from June 1986, after rounding and the 10 percent maximum ceiling, we are adjusting the maximum penalty amount for this CMP to $5,500 per violation.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports and is consistent with the statutory authority set forth in the Debt Collection Improvement Act of 1996, with no issues of policy discretion. Accordingly, we believe that opportunity for prior comment is unnecessary and contrary to the public interest, and are issuing these revised regulations as a final rule that will apply to all future cases under this authority.

IV. Regulatory Impact Statement

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866, and has determined that it does not meet the criteria for a significant regulatory action. As indicated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Debt Collection Improvement Act of 1996 for specific applicable civil money penalties under the authority of the OIG. The great majority of individuals, organizations and entities addressed through these regulations do not engage in such prohibited activities and practices, and as a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited behavior in violation of the statutes. As such, this final rule and the inflation adjustment contained therein should have no effect on Federal or State expenditures.

Regulatory Flexibility Act

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While some penalties may have an impact on small entities, it is the nature...
of the violation and not the size of the
entity that will result in an action by the
OIG, and the aggregate economic impact
of this rulemaking on small business
entities should be minimal, affecting
only those few who have chosen to
engage in prohibited arrangements and
schemes in violation of statutory intent.
Therefore, we have concluded, and the
Secretary certifies, that this final rule
will not have a significant economic
impact on a number of small business
entities, and that a regulatory flexibility
analysis is not required for this
rulemaking.

Paperwork Reduction Act
This final rule imposes no new
reporting or recordkeeping requirements
necessitating clearance by OMB.

List of Subjects
42 CFR Part 1003
Administrative practice and
procedure, Fraud, Grant programs—
health, Health facilities, Health
professions, Maternal and child health,
Medicaid, Medicare, Penalties.

45 CFR Part 79
Administrative practice and
procedure, Fraud, Investigations,
Organizations and functions,
(Governmental agencies), Penalties.

Accordingly, 42 CFR part 1003 and 45
CFR part 79 are amended as set forth below:

A. TITLE 42—PUBLIC HEALTH
CHAPTER V—OFFICE OF INSPECTOR
GENERAL—HEALTH CARE; DEPARTMENT
OF HEALTH AND HUMAN SERVICES
42 CFR part 1003 is amended as set
forth below:

PART 1003—CIVIL MONEY
PENALTIES, ASSESSMENTS AND
EXCLUSIONS
1. The authority citation for past 1003
continues to read as follows:

Authority: 42 U.S.C. 1302, 1230a-7, 1230a-
7a, 1230b-10, 1395(f), 1395u(k).
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