ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 19 and 27

[FRL–5671–1]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (''EPA'') is issuing this final Civil Monetary Penalty Inflation Adjustment Rule as mandated by the Debt Collection Improvement Act of 1996 to adjust EPA's civil monetary penalties (''CMPs'') for inflation on a periodic basis. Prior to this new law, EPA's penalties had never been adjusted for inflation. This rule will allow EPA's penalties to keep pace with inflation and thereby maintain the deterrent effect Congress intended when it originally specified penalties.

This first mandatory adjustment increases almost all of EPA's penalty provisions by ten percent (except for new penalty provisions enacted into law in 1996, which are not being increased). The Agency is required to review its penalties again at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Steven M. Spiegel, Office of Regulatory Enforcement, Multimedia Enforcement Division, Mail Code 2248W, 401 M Street, SW, Washington, D.C. 20460, or at (703) 308–8507. Further information may also be requested by electronic mail (e-mail) to: spiegel.steven@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Pub. L. 101–410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note; Public Law 104–134, enacted April 26, 1996; 110 Stat. 1321), (''DCIA''), each Federal agency is required to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to such agency's statutes. With the adoption of this rule implementing these statutes, all violations which take place after January 30, 1997 will be subject to the new statutory maximum civil penalty amounts.

With the exception of the new penalty provisions added by the 1996 amendments to the Safe Drinking Water Act, all of the statutory penalty provisions administered by EPA are being increased. All of these increases are for the maximum allowed, ten percent. The affected penalty provisions and their statutory maximum amounts are set out in Table 1 of the new 40 CFR 19.4.

Section 5 of the DCIA sets forth the formula for adjusting the penalties for inflation:

> The inflation adjustment described under section 4 shall be determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment. * * * The term ''cost-of-living'' adjustment is the percentage for each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. Any increase determined under this amendment shall be rounded * * *.

However, the DCIA also sets a ten percent cap on the first adjustment for inflation. Since EPA's penalties have never previously been adjusted for inflation, this first statutorily required adjustment will be limited to ten percent. Table A below sets forth each CMP provision which is being increased pursuant to the DCIA and the intermediate calculations performed to arrive at the adjusted final maximum penalty contained in the last column and in today's rule.

TABLE A.—SUMMARY OF CIVIL MONETARY PENALTY INFLATION ADJUSTMENT CALCULATIONS

U.S. Code citation	Civil monetary penalty description	Year penalty amount was last set by law	Maximum penalty amount set by law as of 10/23/96	Inflation factor calculation [1]	Maximum penalty increase amount after P.L. 101–410 rounding [2]	Maximum penalty amount after increase and P.L. 101–410 rounding	Maximum penalty amount after P.L. 101–410 rounding and 10% limit
7 U.S.C. 1361 (1)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC.	1978	$5,000	456.7/195.3	$7,000	$12,000	$5,500
7 U.S.C. 1361 (2)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—1ST & SUBSEQUENT OFFENSES OR VIOLATIONS.	1978	500/1,000	456.7/195.3	700/1,000	1,200/2,000	550/1,100
15 U.S.C. 2615	TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY.	1976	25,000	456.7/170.1	40,000	65,000	27,500
15 U.S.C. 2647(a)	ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY.	1986	5,000	456.7/327.9	2,000	7,000	5,500
31 U.S.C. 3802(a)(1).	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM.	1986	5,000	456.7/327.9	2,000	7,000	5,500
31 U.S.C. 3802(a)(2).	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.	1986	5,000	456.7/327.9	2,000	7,000	5,500
33 U.S.C. 1319(d)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY.	1987	25,000	456.7/340.1	10,000	35,000	27,500
33 U.S.C. 1319(g)(2)(A).	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	1987	10,000/25,000	456.7/340.1	3,000/10,000	13,000/35,000	11,000/27,500

TABLE A.—SUMMARY OF CIVIL MONETARY PENALTY INFLATION ADJUSTMENT CALCULATIONS—Continued

U.S. Code citation	Civil monetary penalty description	Year penalty amount was last set by law	Maximum penalty amount set by law as of 10/23/96	Inflation factor calculation [1]	Maximum penalty increase amount after P.L. 101–410 rounding [2]	Maximum penalty amount after increase and P.L. 101–410 rounding	Maximum penalty amount after P.L. 101–410 rounding and 10% limit
33 U.S.C. 1319(g)(2)(B).	CLEAN WATER ACT VIOLATION/ ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	1987	10,000/125,000	456.7/340.1	3,000/40,000	13,000/165,000	11,000/137,500
33 U.S.C. 1321(b)(6)(B)(I).	CLEAN WATER ACT VIOLATION/ ADMIN PENALTY OF SEC 311(b)(3) & (j) PER VIOLATION AND MAXIMUM.	1990	10,000/25,000 ..	456.7/389.1	2,000/5,000	12,000/30,000 ..	11,000 /27,500
33 U.S.C. 1321(b)(6)(B)(ii).	CLEAN WATER ACT VIOLATION/ ADMIN PENALTY OF SEC 311(b)(3) & (j) PER VIOLATION AND MAXIMUM.	1990	10,000/125,000	456.7/389.1	2,000/20,000	12,000/145,000	11,000/137,500
33 U.S.C. 1321(b)(7)(A).	CLEAN WATER ACT VIOLATION/ CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.	1990	10,000 or ..... 1,000 per b/u ...	456.7/389.1	5,000 or 200 .... per barrel/unit ...	15,000 or 1,200 per barrel/unit ...	11,000 or 1,100 per barrel or unit
33 U.S.C. 1321(b)(7)(B).	CLEAN WATER ACT VIOLATION/ CIVIL JUDICIAL PENALTY OF SEC 311 (c) & (e)(1)(B).	1990	25,000	456.7/389.1	5,000	30,000	27,500
33 U.S.C. 1321(b)(7) C).	CLEAN WATER ACT VIOLATION/ CIVIL JUDICIAL PENALTY OF SEC 311(j).	1990	25,000	456.7/389.1	5,000	30,000	27,500
33 U.S.C. 1321(b)(7)(D).	CLEAN WATER ACT VIOLATION/ MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.	1990	100,000 or 3,000 per b/u.	456.7/389.1	15,000 or 1,000 per b/u.	115,000 or 4,000 per barrel/unit.	11,000 or 3,300 per barrel/unit
33 U.S.C. 1414b(d)	MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT VIOL SEC 104b(d).	1988	600	456.7/353.5	200	800	660
33 U.S.C. 1415(a) ..	MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST & SUBSEQUENT VIOLATIONS.	1988	50,000/125,000	456.7/353.5	15,000/40,000 ..	65,000/165,000	55,000/137,500
42 U.S.C. 300g–3(b).	SAFE DRINKING WATER ACT/ CIVIL JUDICIAL PENALTY OF SEC 1414(b).	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 300g–3(c)	SAFE DRINKING WATER ACT/ CIVIL JUDICIAL PENALTY OF SEC 1414(c).	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 300g–3(g)(3)(A).	SAFE DRINKING WATER ACT/ CIVIL JUDICIAL PENALTY OF SEC. 1414(g)(3)(A).	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 300g–3(g)(3)(B).	SAFE DRINKING WATER ACT/ MAXIMUM ADMINISTRATIVE PENALTY PER SEC. 1414(g)(3)(B).	1986	5,000	456.7/327.9	2,000	7,000	5,500
42 U.S.C. 300h–2(b)(1).	CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL.	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 300h–2(c)(1).	CIVIL ADMINISTRATIVE PENALTY—VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL—PER VIOLATION AND MAXIMUM.	1986	10,000/125,000	456.7/327.9	4,000/50,000	14,000/175,000	11,000/137,500
42 U.S.C. 300h–2(c)(2).	CIVIL ADMINISTRATIVE PENALTY—VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL PER VIOLATION & MAXIMUM.	1986	5,000/125,000 ..	456.7/327.9	2,000/50,000	7,000/175,000 ..	5,500/137,500
42 U.S.C. 300h–3(c)(1).	VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	1974	5,000	456.7/146.9	11,000	16,000	5,500
42 U.S.C. 300h–3(c)(2).	WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	1974	10,000	456.7/146.9	21,000	31,000	11,000
42 U.S.C. 300i–1(b)	ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.	1986	20,000/50,000 ..	456.7/327.9	10,000/20,000 ..	30,000/70,000 ..	22,000/55,000
42 U.S.C. 300j(e)(2)	FAILURE TO COMPLY W/ORDER ISSUED UNDER SEC. 1‘441(c)(1).	1974	2,500	456.7/146.9	5,000	7,500	2,750
42 U.S.C. 300j–4(c)	REFUSAL TO COMPLY WITH REQS OF SEC. 1445(a) OR (b).	1986	25,000	456.7/327.9	10,000	35,000	27,500

TABLE A.—SUMMARY OF CIVIL MONETARY PENALTY INFLATION ADJUSTMENT CALCULATIONS—Continued

U.S. Code citation	Civil monetary penalty description	Year penalty amount was last set by law	Maximum penalty amount set by law as of 10/23/96	Inflation factor calculation [1]	Maximum penalty increase amount after P.L. 101–410 rounding [2]	Maximum penalty amount after increase and P.L. 101–410 rounding	Maximum penalty amount after P.L. 101–410 rounding and 10% limit
42 U.S.C. 300j–23(d).	VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE.	1988	5,000/50,000	456.7/353.5	1,000/15,000	6,000/65,000	5,500/55,000
42 U.S.C. 6928(a)(3).	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.	1984	25,000	456.7/310.7	10,000	35,000	27,500
42 U.S.C. 6928(c)	RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.	1984	25,000	456.7/310.7	10,000	35,000	27,500
42 U.S.C. 6928(g)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C.	1976	25,000	456.7/170.1	40,000	65,000	27,500
42 U.S.C. 6928(h)(2).	RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER.	1984	25,000	456.7/310.7	10,000	35,000	27,500
42 U.S.C. 6934(e)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER.	1976	25,000	456.7/170.1	8,000	13,000	5,500
42 U.S.C. 6973(b)	RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER.	1976	5,000	456.7/170.1	8,000	13,000	5,500
42 U.S.C. 6991e(a)(3).	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMIN. ORDER.	1984	25,000	456.7/310.7	10,000	35,000	27,500
42 U.S.C. 6991e(d)(1).	RES. CONS. & REC. ACT/FAILURE TO NOTIFY OR SUBMIT FALSE INFO.	1984	10,000	456.7/310.7	5,000	15,000	11,000
42 U.S.C. 6991e(d)(2).	VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS.	1984	10,000	456.7/310.7	5,000	15,000	11,000
42 U.S.C. 6992(d)(2).	NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ASSESSED THRU ADMIN ORDER.	1988	25,000	456.7/353.5	5,000	30,000	27,500
42 U.S.C. 6992d(a)(4).	NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ADMIN ORDER.	1988	25,000	456.7/353.5	5,000	30,000	27,500
42 U.S.C. 6992d(d)	MEDICAL WASTE TRACKING ACT VIOLATIONS—JUDICIAL PENALTY.	1988	25,000	456.7/353.5	5,000	30,000	27,500
42 U.S.C. 7413(b)	CLEAN AIR ACT/VIOLATIONS/OWNERS & OPS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.	1977	25,000	456.7/181.8	40,000	65,000	27,500
42 U.S.C. 7413(d)(1).	CLEAN AIR ACT/STATIONARY AIR POLLUTION SOURCES—ADMINISTRATIVE PENALTIES PER VIOLATION AND MAXIMUM.	1977	25,000/200,000	456.7/181.8	40,000/300,000	65,000/300,000	27,500/220,000
42 U.S.C. 7413(d)(3).	CLEAN AIR ACT/MINOR VIOLATIONS/ STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.	1990	5,000	456.7/389.1	1,000	6,000	5,500
42 U.S.C. 7524(a)	TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.	1977	2,500	456.7/181.8	2,000	6,500	2,750
42 U.S.C. 7524(a)	VIOLATION OF 7522 (a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a) (1), (2), (4), & (5) BY ANYONE.	1990	25,000	456.7/389.1	5,000	30,000	27,500
42 U.S.C. 7524(c)	ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & 7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.	1990	200,000	456.7/389.1	30,000	230,000	220,000
42 U.S.C. 7545(d)	VIOLATIONS OF FUELS REGULATIONS.	1990	25,000	456.7/389.1	5,000	30,000	27,500
42 U.S.C. 9604(e)(5)(B).	SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.	1986	25,000	456.7/389.1	10,000	35,000	27,500
42 U.S.C. 9606(b)	SUPERFUND/WORK NOT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.	1986	25,000	456.7/389.1	10,000	35,000	27,500

TABLE A.—SUMMARY OF CIVIL MONETARY PENALTY INFLATION ADJUSTMENT CALCULATIONS—Continued

U.S. Code citation	Civil monetary penalty description	Year penalty amount was last set by law	Maximum penalty amount set by law as of 10/23/96	Inflation factor calculation [1]	Maximum penalty increase amount after P.L. 101–410 rounding [2]	Maximum penalty amount after increase and P.L. 101–410 rounding	Maximum penalty amount after P.L. 101–410 rounding and 10% limit
42 U.S.C. 9609(a) & (b).	SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622+.	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 9609(b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT.	1986	75,000	456.7/327.9	30,000	105,000	82,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622.	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.	1986	75,000	456.7/327.9	30,000	105,000	82,500
42 U.S.C. 11045(a) & (b) (1), (2) & (3).	EMERGENCY PLANNING AND COMMUNITY RIGHT-T0-KNOW ACT CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES.	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 11045(b) (2) & (3).	EPCRA CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.	1986	75,000	456.7/327.9	30,000	105,000	82,500
42 U.S.C. 11045(c)(1).	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 11045(c)(2).	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).	1986	10,000	456.7/327.9	4,000	14,000	11,000
42 U.S.C. 11045(d) (2) & (3).	EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.	1986	25,000	456.7/327.9	10,000	35,000	27,500

[1] The ''inflation factor'' is the result of dividing the June 1995 CPI by the CPI for June of the year the penalty was last set or adjusted.
[2] The penalties must be rounded after the inflation adjustment pursuant to Public Law 101–410 Sec. 5A.

Future adjustments also be made in accordance with the statutory formula. Since today's inflation adjustments are being made in December 1996, the next scheduled adjustment will cover inflation from June 1996 to June of the year in which the next adjustment is made. The DCIA requires that penalties be adjusted for inflation at least once every four years.

Procedural Requirements

I. Administrative Procedure Act

In accordance with 5 U.S.C. 553(b), the Administrative Procedure Act (''APA''), EPA generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. However, 5 U.S.C. 553(b)(3)(B), of the APA provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is ''impracticable, unnecessary, or contrary to the public interest''.

Accordingly, EPA finds that providing an opportunity for public comment prior to publication of this rule is not necessary because EPA is carrying out a ministerial, non-discretionary duty specified in an Act of Congress. This rule incorporates requirements specifically set forth in the DCIA requiring EPA to issue a regulation implementing inflation adjustments for all its civil penalty provisions by October 23, 1996. The formula for the amount of the penalty adjustment is prescribed by Congress in the DCIA as well. Prior notice and opportunity to comment are therefore unnecessary in this case because these changes are not subject to the exercise of discretion by EPA. These technical changes, required by law, do not substantively alter the existing regulatory framework nor in any way affect the terms under which civil penalties are assessed by EPA.

II. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's Federal Register. This rule is a not a ''major rule'' as defined by 5 U.S.C. 804(a).

III. Executive Order 12866-Regulatory Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (''OMB'') review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

IV. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 201, 202 and 205 of the UMRA, EPA generally must assess effects and prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

UMRA Section 201 excepts agencies from assessing effects on State, local or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. Since this rule incorporates requirements specifically set forth in the DCIA, EPA is not required to assess its regulatory effects under Section 201. Further, the section 202 and 205 requirements do not apply to today's action because they apply only to rules for which a general notice of proposed rulemaking is published, and such notice was not published for this rule since it was not required based on the finding of good cause contained in Section I above. Additionally, today's action contains no Federal mandates for State, local or tribal governments or for the private sector because it does not impose any enforceable duties on these entities.

In addition, even if the assessment requirements of UMRA Title II otherwise applied to this rule, the requirements of section 203 of UMRA (requiring EPA to develop a small government agency plan before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments) would not apply here. This rule contains no regulatory requirements that might significantly or uniquely affect small governments because the prescribed inflation adjustments do not change a small government's regulatory obligations. Additionally, this rule will have a similar effect on all individuals and entities subject to civil monetary penalties.

V. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603, the Agency has determined that the regulation being issued today is not subject to the Regulatory Flexibility Act (''RFA''), which generally requires an agency to conduct a regulatory flexibility analysis of any significant impact the rule will have on a substantial number of small entities. By its terms, the RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA or any other statute. Today's rule is not subject to notice and comment requirements under the APA or any other statute because it is exempted. As discussed in Section I, while the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption from the APA notice and comment requirements.

The Agency nonetheless has assessed the potential of this rule to adversely impact small entities. This rule contains no regulatory requirements that might significantly or uniquely affect small entities because the prescribed inflation adjustments have similar effect on all entities subject to civil monetary penalties and does not substantively alter the existing regulatory framework.

VI. Paperwork Reduction Act

This action contains no reporting or record keeping requirements for any non-federal persons or entities and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

40 CFR Part 27

Administrative practice and procedure, Assessments, False claims, False statements, Penalties.

Dated: December 20, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding a new part 19 as follows:

1. By adding a new part 19 to read as follows:

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

Sec.

19.1 Applicability.
19.2 Effective Date.
19.3 [Reserved].
19.4 Penalty Adjustment and Table.

Authority: Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note; Pub. L. 104–134, 110 Stat. 1321, 31 U.S.C. 3701 note.

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

§ 19.1 Applicability.

This part applies to each statutory provision under the laws administered by the Environmental Protection Agency concerning the maximum civil monetary penalty which may be assessed in either civil judicial or administrative proceedings.

§ 19.2 Effective Date.

The increased penalty amounts set forth in this rule apply to all violations under the applicable statutes and regulations which occur after January 30, 1997.

§ 19.3 [Reserved].

§ 19.4 Penalty Adjustment and Table.

The adjusted statutory penalty provisions and their maximum applicable amounts are set out in Table 1. The last column in the table provides the newly effective maximum penalty amounts.

TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
7 U.S.C. 136(1)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC.	$5,500
7 U.S.C. 136(2)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—FIRST AND SUBSEQUENT OFFENSES OR VIOLATIONS.	550/1,000
15 U.S.C. 2615	TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY	27,500
15 U.S.C. 2647(a)	ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY	5,500
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM	5,500

TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
31 U.S.C. 3802(a)(2)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.	5,500
33 U.S.C. 1319(d)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY	27,500
33 U.S.C. 1319(g)(2)(A)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	11,000/27,500
33 U.S.C. 1319(g)(2)(B)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	11,000/137,500
33 U.S.C. 1321(b)(6)(B)(I)	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(B)(3)&(J) PER VIOLATION AND MAXIMUM.	11,000/27,500
33 U.S.C. 1321(b)(6)(B)(ii)	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(B)(3)&(J) PER VIOLATION AND MAXIMUM.	11,000/137,500
33 U.S.C. 1321(b)(7)(A)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.	11,000 or 1,100 per barrel or unit
33 U.S.C. 1321(b)(7)(B)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(c)&(e)(1)(B).	27,500
33 U.S.C. 1321(b)(7)(C)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(j)	27,500
33 U.S.C. 1321(b)(7)(D)	CLEAN WATER ACT VIOLATION/MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.	11,000 or 3,300 per barrel or unit
33 U.S.C. 1414b(d)	MARINE PROTECTION, RESEARCH & SANCTUARIES ACT VIOL SEC 104b(d)	660
33 U.S.C. 1415(a)	MARINE PROTECTION RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST AND SUBSEQUENT VIOLATIONS.	55,000/137,500
42 U.S.C. 300g–3(b)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(b)	27,500
42 U.S.C. 300g–3(c)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(c)	27,500
42 U.S.C. 300g–3(g)(3)(A)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC. 1414(g)(3)(a)	27,500
42 U.S.C. 300g–3(g)(3)(B)	SAFE DRINKING WATER ACT/MAXIMUM ADMINISTRATIVE PENALTY PER SEC. 1414(g)(3)(B).	5,500
42 U.S.C. 300h–2(b)(1)	CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL (UIC).	27,500
42 U.S.C. 300h–2(c)(1)	CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	11,000 / 137,500
42 U.S.C. 300h–2(c)(2)	CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	11,000
42 U.S.C. 300h–3(c)(1)	VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL	5,500
42 U.S.C. 300h–3(c)(2)	WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL	11,000
42 U.S.C. 300i–1(b)	ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.	22,000 / 55,000
42 U.S.C. 300j(e)(2)	FAILURE TO COMPLY W/ORDER ISSUED UNDER SEC. 1441(c)(1)	2,750
42 U.S.C. 300j–4(c)	REFUSAL TO COMPLY WITH REQS. OF SEC. 1445(a) OR (b)	27,500
42 U.S.C. 300j–23(d)	VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE	5,500 / 55,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.	27,500
42 U.S.C. 6928(c)	RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.	27,500
42 U.S.C. 6928(g)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C	27,500
42 U.S.C. 6928(h)(2)	RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER	27,500
42 U.S.C. 6934(e)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER	5,500
42 U.S.C. 6973(b)	RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER	5,500
42 U.S.C. 6991e(a)(3)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMINISTRATIVE ORDER	27,500
42 U.S.C. 6991e(d)(1)	RES. CONS. & REC. ACT/FAILURE TO NOTIFY OR SUBMIT FALSE INFO	11,000
42 U.S.C. 6991e(d)(2)	VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS	11,000
42 U.S.C. 6992d(a)(2)	NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ASSESSED THRU ADMIN ORDER.	27,500
42 U.S.C. 6992d(a)(4)	NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ADMINISTRATIVE ORDER.	27,500
42 U.S.C. 6992d(d)	VIOLATIONS OF MEDICAL WASTE TRACKING ACT—JUDICIAL PENALTIES	27,500
42 U.S.C. 7413(b)	CLEAN AIR ACT/VIOLATION/OWNERS & OPS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.	27,500
42 U.S.C. 7413(d)(1)	CLEAN AIR ACT/VIOLATION/OWNERS & OPS OF STATIONARY AIR POLLUTION SOURCES—ADMINISTRATIVE PENALTIES PER VIOLATION & MAX.	27,500/220,000
42 U.S.C. 7413(d)(3)	CLEAN AIR ACT/MINOR VIOLATIONS/STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.	5,500
42 U.S.C. 7524(a)	TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.	2,750
42 U.S.C. 7524(a)	VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a)(1), (2), (4), & (5) BY ANYONE.	27,500
42 U.S.C. 7524(c)	ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & (7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.	220,000
42 U.S.C. 7545(d)	VIOLATIONS OF FUELS REGULATIONS	27,500
42 U.S.C. 9604(e)(5)(B)	SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.	27,500

TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
42 U.S.C. 9606(b)	SUPERFUND/WORK NOT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.	27,500
42 U.S.C. 9609(a) & (b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622.	27,500
42 U.S.C. 9609(b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT	82,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622	27,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.	82,500
42 U.S.C. 11045(a) & (b)(1), (2) & (3).	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES.	27,500
42 U.S.C. 11045(b) & (2)(3)	EPCRA CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.	82,500
42 U.S.C. 11045(c)(1)	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.	27,500
42 U.S.C. 11045(c)(2)	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).	11,000
42 U.S.C. 11045(d) & (2)(3)	EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.	27,500

PART 27—[AMENDED]

2. The authority citation for part 27 is revised to read as follows:

Authority: 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note; Pub. L. 104–134, 110 Stat. 1321, 31 U.S.C. 3701 note.

4. Section 27.3 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 27.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes, or is supported by, any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,500 [1] for each such claim.

* * * * *

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, factitious, or fraudulent; or

(B) Is false, factitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,500 [2] for each such statement.

* * * * *

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[1] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).

[2] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).