

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 19 and 745

[FRL-5849-2]

#### Civil Monetary Penalty Inflation Adjustment Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; amended.

**SUMMARY:** The Environmental Protection Agency ("EPA") is amending the final Civil Monetary Penalty Inflation Adjustment Rule as mandated by the Debt Collection Improvement Act of 1996 ("DCIA") to adjust EPA's civil monetary penalties ("CMPs") for inflation on a periodic basis. Previously, EPA adjusted almost all of its CMPs when the final Civil Monetary Penalty Inflation Adjustment Rule was published on December 31, 1996, with technical corrections published on March 20, 1997. At that time, EPA omitted addressing the penalty provisions of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Lead-Paint Act" or "LPA"), and the Noise Control Act of 1972 ("Noise Act" or "NCA"). Like the earlier Rule, these additional adjustments will allow EPA's penalties to keep pace with inflation and thereby maintain the deterrent effect Congress intended when it originally specified penalty amounts.

With this additional mandatory adjustment, all of EPA's penalty provisions will have been increased by ten percent (except for new penalty provisions enacted into law in 1996, which were not subject to being increased). The Agency is required to review its penalties again at least once every four years and to adjust them as necessary for inflation according to a specified formula. A complete version of Table 1, from 40 CFR 19.4, which now lists all of the EPA's civil monetary penalty authorities, appears near the end of this document.

**EFFECTIVE DATE:** July 28, 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. The December 31, 1996 Final Rule, the March 20, 1997 Correction, and this Amended Final Rule are also available on the Office of Enforcement and

Compliance Assurance's Web page at: <http://www.epa.gov/OECA>

#### SUPPLEMENTARY INFORMATION:

##### Need for Rule Amendment

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; Pub. L. 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.

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 set a ten percent cap on the first adjustment for inflation. Since EPA's penalties had never previously been adjusted for inflation, this initial statutorily required adjustment is limited to ten percent.

EPA adjusted almost all of its CMPs when the final Civil Monetary Penalty Inflation Adjustment Rule was published on December 31, 1996 (61 FR 69359), with the Rule taking effect on January 30, 1997. Later, a "Correction" was published on March 20, 1997 (62 FR 13514), to address some minor technical errors in the rule and to provide "additions" of information to enhance public understanding of the rule. The effective date of the Rule was not altered by the correction. With the exception of the new penalty provisions added by the 1996 Amendments to the Safe Drinking Water Act (which were not subject to any adjustment), all of the statutory penalty provisions administered and identified by EPA at that time, were increased by ten percent, the maximum allowed pursuant to the DCIA.

However, the published final and corrected regulations did not address the penalty provisions of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C.

4852d, ("Lead-Paint Act" or "LPA"), its corresponding regulations in 40 CFR Part 745, and the Noise Control Act of 1972, 42 U.S.C. 4910(a)(2) ("Noise Act" or "NCA"), since they had not been identified.<sup>1</sup> These CMP's were later identified and therefore are being adjusted in accordance with the DCIA by today's rulemaking.

##### Effect of Amended Final Rule

Only the two previously unadjusted CMPs for the Lead-Paint Act and the Noise Act are being adjusted by this rule through their inclusion in Table 1 of Section 19.4. With the adoption of this amended rule implementing the DCIA, all violations of Section 1018 of the Lead-Paint Act and the Noise Act which take place after July 28, 1997 will be subject to the new statutory maximum civil penalty amounts. The original effective date of January 30, 1997, still applies to the CMP's adjusted by the original December 31, 1996, final rule, as well as to the corrected CMP's addressed in March 20, 1997, Correction. A revised Table 1 of Section 19.4, which now provides a list of all of the applicable statutory provisions and maximum civil penalties, appears near the end of this rule.

Future adjustments to these two CMPs will be made in accordance with the statutory formula. Since today's inflation adjustments are being made in June 1997, the next scheduled adjustment will cover inflation from June 1997 to June of the year preceding 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 the December 31, 1996 notice, EPA found good cause, pursuant to 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act ("APA"), that soliciting public comment prior to publication of the rule was not necessary because EPA is carrying out a ministerial, non-discretionary duty per direction of an Act of Congress. EPA finds that good cause continues to apply to this rule.

##### 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 ("SBREFA"), EPA submitted a report containing this

<sup>1</sup> EPA enforces the Residential Lead-Based Paint Act of 1992, and the 40 CFR Part 745 regulations, through Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2615. The Department of Housing and Urban Development has joint responsibility for enforcing the Lead-Paint Act.

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 not a "major rule" as defined by 5 U.S.C. 804(a).

**III. Other Procedural Requirements**

For the reasons stated in the December 31, 1996, final rule, the regulation being issued today is not subject to certain requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), the Unfunded Mandates Reform Act of 1995 (P.L. 104-4) (UMRA), and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA). As stated in the December 31, 1996 rule, this action is not a "significant regulatory action" under Executive Order 12866 and, is therefore not subject to review by the Office of Management and Budget. In addition, for the reasons stated in the December 31, 1996 rule, this action is not subject to the assessment requirements of UMRA Title II or the requirements of section 203 of UMRA. Because this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the provisions of the RFA.

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.

**IV. 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 745**

Environmental protection, Administrative practice and procedure, Lead, Penalties.

Dated: June 23, 1997.

**Carol M. Browner,**

*Administrator, Environmental Protection Agency.*

For the reasons set out in the preamble, title 40, chapter I of the Code

of Federal Regulations is amended as follows:

**PART 19—[AMENDED]**

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

**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.

2. Section 19.2 is revised to read as follows:

**§ 19.2 Effective date.**

The increased penalty amounts set forth in this part apply to all violations under the applicable statutes and regulations which occur after January 30, 1997; except for violations subject to penalty under 42 U.S.C. 4852d(b)(5) and 42 U.S.C. 4910(a)(2), which are subject to the new penalty amounts for any violations after July 28, 1997.

3. Table 1 of 40 CFR 19.4 is amended by adding two new entries, in the order of the U.S.C. Code Citations in the first column, to read as follows:

**§ 19.4 Penalty Adjustment and Table.**

\* \* \* \* \*

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

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
* * * * *	* * * * *	* * * * *
42 U.S.C. 4852d(b)(5)	Residential Lead-Based Paint Hazard Reduction Act of 1992, Sec 1018—Civil Penalty.	\$11,000
42 U.S.C. 4910(a)(2)	Noise Control Act of 1972—Civil Penalty	\$11,000
* * * * *	* * * * *	* * * * *

For the convenience of the reader, the complete Table 1 of 40 CFR 19.4—Civil Monetary Penalty Inflation Adjustments, including the two new adjustments added by this rule is republished as it will appear in the July 1, 1997 Code of Federal Regulations, as follows:

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. 1361.(a)(1)	Federal Insecticide, Fungicide, & Rodenticide Act Civil Penalty—General—Commercial Applicators, Etc.	\$5,500
7 U.S.C. 1361.(a)(2)	Federal Insecticide, Fungicide, & Rodenticide Act Civil Penalty—Private Applicators—First and Subsequent Offenses or Violations.	\$550/\$1,000
15 U.S.C. 2615(a)	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
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

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

U.S. Code Citation	Civil Monetary Penalty Description	New Maximum Penalty Amount
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.	\$27,500 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.	\$110,000 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 & 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 Penalties per Sec 1414(g)(3)(B).	\$5,000/\$25,000*
42 U.S.C. 300g-3(g)(3)(C)	Safe Drinking Water Act/Threshold requiring Civil Judicial Action per Sec 1414(g)(3)(C).	\$25,000*
42 U.S.C. 300h-2(b)(1)	SDWA/Civil Judicial Penalty/Violations of REQS—Underground Injection Control (UIC).	\$27,500
42 U.S.C. 300h-2(c)(1)	SDWA/Civil Admin Penalty/Violations of UIC REQS—per Violation and Maximum.	\$11,000/\$137,500
42 U.S.C. 300h-2(c)(2)	SDWA/Civil Admin Penalty/Violations of UIC REQS—per Violation and Maximum.	\$5,500/\$137,500
42 U.S.C. 300h-3(c)(1)	SDWA/Violation/Operation of New Underground Injection Well	\$5,500
42 U.S.C. 300h-3(c)(2)	SDWA/Willful Violation/Operation of New Underground Injection Well	\$11,000
42 U.S.C. 300i(b)	SDWA/Failure to Comply With Imminent and Substantial Endangerment Order.	\$15,000
42 U.S.C. 300i-1(c)	SDWA/Attempting to or Tampering With Public Water System/Civil Judicial Penalty.	\$22,000/\$55,000
42 U.S.C. 300j(e)(2)	SDWA/Failure To Comply W/Order Issued Under Sec. 1441(c)(1)	\$2,750
42 U.S.C. 300j-4(c)	SDWA/Refusal to Comply with Reqs. of Sec. 1445(a) or (b)	\$27,500
42 U.S.C. 300j-6(b)(2)	SDWA/Failure To Comply With Admin. Order Issued to Federal Facility.	\$25,000*
42 U.S.C. 300j-23(d)	SDWA/Violations/Section 1463(b)—First Offense/Repeat Offense	\$5,500/\$55,000
42 U.S.C. 4852d(b)(5)	Residential Lead-Based Paint Hazard Reduction Act of 1992, Sec 1018—Civil Penalty.	\$11,000
42 U.S.C. 4910(a)(2)	Noise Control Act of 1972—Civil Penalty	\$11,000
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 for Submitting False Information.	\$11,000
42 U.S.C. 6991e(d)(2)	RCRA/Violations of Specified UST Regulatory Requirements	\$11,000
42 U.S.C. 6992d(a)(2)	RCRA/Noncompliance W/Medical Waste Tracking Act Assessed Thru Admin Order.	\$27,500
42 U.S.C. 6992d(a)(4)	RCRA/Noncompliance W/Medical Waste Tracking Act Administrative Order.	\$27,500
42 U.S.C. 6992d(d)	RCRA/Violations of Medical Waste Tracking Act—Judicial Penalties	\$27,500
42 U.S.C. 7413(b)	Clean Air Act/Violation/Owners & Operators of Stationary Air Pollution Sources-Judicial Penalties.	\$27,500
42 U.S.C. 7413 (d)(1)	Clean Air Act/Violation/Owners & Operators 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

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. 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
42 U.S.C. 9606(b)(1)	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) (1)	EPCRA—Frivolous Trade Secret Claims—Civil and Administrative Penalties.	\$27,500

\*These sections were added by the 1996 Amendments to the Safe Drinking Water Act, which were not subject to inflation adjustment by the DCIA; the penalty amounts listed in Table 1 for such provisions are the original statutory amounts, listed here for convenience by providing a complete listing of all of EPA's civil penalty authorities in this table.

**PART 745—[AMENDED]**

4. The authority citation for part 745 revised to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2615, 2681–2692 and 42 U.S.C. 4852d.

5. Section 745.118 is amended by revising paragraph (f) to read as follows:

**§ 745.118 Enforcement.**

\* \* \* \* \*

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15

U.S.C. 2615 shall be not more than \$11,000 for all violations occurring after July 28, 1997; all violations occurring on or prior to that date are subject to a penalty not more than \$10,000.

[FR Doc. 97–16894 Filed 6–26–97; 8:45 am]

BILLING CODE 6560–50–P