

IMPORTANT NOTE

The following **1/11/18 guidance** establishing penalty policy inflation amounts and the **1/10/18 penalty inflation rule (83 Fed. Reg. 1190)** establishing statutory penalty amounts **are no longer in effect**. The currently applicable penalty policy inflation amounts and most recent penalty inflation rule can be found on EPA's "Enforcement Policy, Guidance & Publications" website in the "Penalty Inflation Rules and Penalty Policy Amendments" section at <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications#penalty>. The statutory penalty amounts from the most recent rule are also codified in 40 C.F.R. § 19.4.



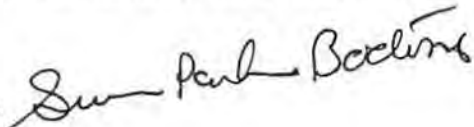
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 11 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule

FROM: Susan Parker Bodine 
Assistant Administrator

TO: Regional Administrators
Deputy Regional Administrators
Director, Office of Civil Enforcement

The purpose of this memorandum is twofold: (1) to amend all existing civil penalty policies to account for inflation and (2) to transmit the recently promulgated 2018 Civil Monetary Penalty Adjustment Rule (2018 Rule).¹ The 2018 Rule amends 40 C.F.R. § 19.4 to adjust the statutory civil penalties under the various environmental laws implemented by the EPA to account for inflation. The 2018 Rule was published on January 10, 2018, is effective on January 15, 2018, and is attached to this memorandum. The amendments to the EPA's penalty policies are also effective on January 15, 2018. This memorandum also clarifies the differences between the EPA's statutory maximum and minimum civil penalties and the EPA's penalty policies.

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act)² was signed into law on November 2, 2015, to improve the effectiveness of statutory maximum and minimum civil monetary penalties and to maintain their deterrent effect, thereby promoting compliance with the law. The 2015 Act instructed the EPA and other federal agencies to: (1) adjust the level of statutory maximum and minimum civil penalties with an initial "catch-up" rule; and (2) make subsequent annual adjustments for

¹ 83 Fed. Reg. 1190 (Jan. 10, 2018).

² 28 U.S.C. § 2461 note, Pub. L. 114-74 (*see* <https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf>).

inflation beginning in January 2017. The 2015 Act also prescribed the formula that federal agencies must follow in making these adjustments.

To fulfill the initial catch-up requirement, the EPA promulgated the 2016 Civil Monetary Penalty Inflation Adjustment Rule on August 1, 2016 (2016 Rule), which increased the EPA's statutory maximum and minimum civil penalties.³ To fulfill the second requirement of the 2015 Act requiring annual adjustments, the EPA made the first annual adjustment by promulgating the 2017 Civil Monetary Penalty Inflation Adjustment Rule, effective on January 15, 2017.⁴ The 2018 Rule, effective January 15, 2018, and transmitted herewith, makes the second annual adjustment.

Although not required by the 2015 Act, the EPA decided to amend its penalty policies in 2016 to better account for inflation going forward. While consistent with the purposes of the 2015 Act, these amendments and the methodology used in making these amendments are not governed by, and are distinct from, the 2015 Act and the 2018 Rule. To make these policy amendments, on July 27, 2016, the EPA's Office of Enforcement and Compliance Assurance (OECA) issued a memorandum that amended the EPA's penalty policies to account for inflation.⁵ That memorandum was effective on August 1, 2016. Because the subsequent increase in inflation was minimal from August 2016 to January 2017, the EPA decided to defer further modifying the penalty policies until January 2018. This memorandum thus amends the EPA's penalty policies to account for inflation to date. Looking ahead, the EPA plans to again amend its penalty policies to account for inflation in January 2020, barring any significant changes in inflation.

II. Applicability of this Memorandum

This memorandum supersedes the inflation-based amendments to the EPA's penalty policies made in the 2016 memorandum, but is not intended to change the methodology used in that memorandum. This memorandum partially supersedes the EPA's 2013 inflation amendments memorandum because the multipliers contained in the 2013 memorandum should still be used for violations that occurred on or before November 2, 2015.

This memorandum does not modify the EPA's Expedited Settlement Agreement penalty policies nor does it modify the non-penalty dollar amounts in civil penalty policies, such as the amounts deemed "insignificant" or "de minimis" that apply when calculating economic benefit of noncompliance.

³ The 2016 Rule was published on July 1, 2016, and became effective on August 1, 2016. 81 Fed. Reg. 43,091.

⁴ The Rule was published on January 12, 2017, and became effective on January 15, 2017. 82 Fed. Reg. 3633. The Office of Civil Enforcement within OECA issued a memorandum on January 13, 2017 transmitting the rule; that memorandum is titled *Transmittal of the 2017 Annual Civil Monetary Penalty Inflation Adjustment Rule*.

⁵ The July 27, 2016 memorandum is titled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)*. Past inflation adjustment memoranda on the EPA's statutory maximum and minimum amounts and the EPA's penalty policies can be found here: <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>.

The penalty policies listed in Table A are the most recent narrative versions of each policy. The “narrative version” is the applicable media-specific penalty policy that comprehensively explains how the EPA enforcement practitioners should calculate penalties for purposes of administrative actions or settlements. This memorandum does not change or alter the narrative version of the media-specific penalty policies; this memorandum only alters the numerical gravity-based penalty amounts that are calculated under those policies to account for inflation.

Media enforcement programs may modify their penalty policies individually, and any such modifications may supersede application of this memorandum for that program. Practitioners should rely on the multipliers in Table A until the applicable penalty policy is modified or civil penalty policy amounts are adjusted by subsequent memorandum in accordance with inflation.

III. Amendments to the EPA’s Civil Penalty Policies

Consistent with the methodology used in the July 27, 2016, penalty policy inflation amendments memorandum, the EPA is amending its penalty policies through the use of multipliers listed in Table A of this memorandum. Please note that the multipliers listed in Table A should be used for violations occurring after November 2, 2015. **For violations occurring on or before November 2, 2015, use the multipliers listed in the December 6, 2013, inflation adjustment memorandum titled *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.**⁶

A. Application of Inflation Multiplier to Gravity-Based Portion of Penalty

For each violation occurring after November 2, 2015, find the applicable penalty policy in Table A and use the policy to determine the initial calculated gravity-based penalty for your case.⁷ This initial gravity-based penalty will not be adjusted for inflation to reflect present value of the dollar. To adjust the penalty figure into present value, multiply the gravity-based portion of the penalty by the multiplier associated with the applicable penalty policy in Table A. Next, round the calculated gravity-based portion of the penalty amount to the nearest dollar.⁸ Then, if applicable, calculate the gravity-based portion of the penalty for each violation occurring on or before November 2, 2015, using the applicable

⁶ The December 6, 2013, memorandum can be found here: <https://www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf>.

⁷ Most media specific penalty policies define “gravity” as the “seriousness of the violation.” Each media specific penalty policy uses specific factors to calculate the gravity component. Many of these factors are taken from their respective statutes and some factors are unique to that specific penalty policy. Therefore, it is important for case teams to review each specific penalty policy to understand how the gravity component is defined and how it is calculated.

⁸ We are instructing case teams to round to the nearest dollar because this was the approach taken in the 2015 Act, the EPA’s last penalty inflation memorandum from July 27, 2016, and the Office of Management and Budget’s (OMB) [February 24, 2016](#), and [December 15, 2017](#), memoranda that instructed federal agencies how to implement the 2016 Rule and 2018 Rule, respectively.

inflation multiplier from the guidance memorandum dated December 6, 2013. Add the gravity-based portion of the penalty for pre-November 3, 2015, violations to the gravity-based portion of the penalty for post-November 2, 2015, violations to calculate the total gravity-based penalty. Once the total gravity-based penalty has been calculated, incorporate economic benefit⁹ and any other factors (e.g., ability to pay, litigation considerations, etc.) that apply as instructed by the penalty policy to arrive at the total penalty.¹⁰

Enforcement practitioners should apply the multipliers in Table A only to the penalty amounts adopted within the “narrative” penalty policies listed in Table A. The multipliers in Table A should not be applied to penalty policies issued after the date of this memorandum unless expressly stated in the subsequent penalty policy.

B. Derivation of the Inflation Multipliers

Because the purpose of amending the EPA’s penalty policies is to account for inflation since the penalty policies were last amended for inflation in the July 27, 2016, memorandum, the majority of multipliers listed in Table A were calculated by multiplying the multipliers listed in the July 27, 2016 memorandum by the inflation increase that has occurred since the July 27, 2016 memorandum.¹¹

IV. 2018 Rule and the Newly Adjusted Statutory Maximum and Minimum Amounts

The 2018 Rule was promulgated to fulfill the annual statutory maximum and minimum inflation adjustment requirement in the 2015 Act. As instructed by the 2015 Act and as explained in the 2018

⁹ We are not modifying the long-standing approach of calculating economic benefit separately from the gravity-based amount, because economic benefit calculations already take inflation into account. The inflation adjustments in this guidance only apply to the gravity-based portion of the penalty.

¹⁰ If the total penalty amount calculated is greater than the statutory maximum amount, then the statutory maximum amount would apply. Similarly, the entire penalty sought (including economic benefit) in an administrative enforcement action cannot exceed any applicable administrative penalty caps. Note that penalty amounts greater than those calculated using the EPA penalty policies and this memorandum may be appropriate in limited circumstances. For example, in a formal administrative enforcement context, the EPA may seek, and presiding officers or the Environmental Appeals Board may assess, higher penalties provided such amounts do not exceed the statutory maximum, are in accordance with statutory civil penalty factors, and consider applicable civil penalty guidelines, and provided that any deviations from applicable penalty policies are persuasively and convincingly explained. *See, e.g.*, 40 C.F.R. § 22.27(b) and *In Re Morton L. Friedman & Schmitt Construction Company*, 11 E.A.D. 302 (EAB 2004).

¹¹ In the July 27, 2016 memorandum, most of the multipliers were calculated using the increase established by the Consumer Price Index for all Urban Consumers (CPI-U) from the date the penalty policy was issued through October 2015. For the multipliers listed in Table A of this memorandum, we multiplied these figures from the July 27, 2016 memorandum by the CPI-U increase from October 2015 to October 2017. We used the October 2017 figure because this figure was used for calculating the statutory increases in the 2018 Rule. The October 2017 CPI-U was 246.663 and the October 2015 CPI-U was 237.838, yielding an increase of 1.03711. The only multiplier that does not follow this calculation framework is the EPCRA Enforcement Response Policy, which was amended on February 24, 2017 and uses 1.03711 as the multiplier in Table A of this memorandum. *See infra* note 21.

Rule, the EPA calculated the new penalty amounts by multiplying the cost-of-living multiplier¹² by the previous statutory penalty amount as adjusted by the 2017 Rule. The result is the amount listed in the farthest column on the right in Table 2 of 40 C.F.R. § 19.4 and the 2018 Rule. This amount applies to violations occurring after November 2, 2015.

A. Penalty Pleading in Administrative Litigation

Where the EPA decides to cite the statutory maximum and/or minimum penalty amount in an administrative pleading (such as in an administrative complaint), the applicable statutory maximum and/or minimum penalty amount in effect for the violations should be used.¹³ The EPA should cite the statutory maximum and minimum penalty provisions and 40 C.F.R. § 19.4, along with the applicable inflation-adjusted penalty maximum levels set forth in 40 C.F.R. § 19.4. Multiple penalty-adjustment cycles should only be used when violations occurred on or before November 2, 2015 and after November 2, 2015. If this arises, the EPA should cite each applicable penalty-adjustment cycle and the corresponding penalty amount. Particularly where violations have occurred both after November 2, 2015, and before such date, case teams also may find it helpful to state that the statutory maximum and minimum civil penalty level has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701).

B. Statutory Administrative Penalty Caps

Note that, effective January 15, 2018, where the EPA seeks administrative penalties in a complaint, amended complaint, or through a 40 C.F.R. § 22.18 settlement, the increased administrative penalty caps in Table 2 of § 19.4 in the attached 2018 Rule apply if *some or all* of the violations occurred after November 2, 2015. The lower administrative penalty caps in Table 1 of § 19.4 apply if *all* violations occurred on or before November 2, 2015.

V. Multiple Penalty Cycles – Case Team Discretion

If the time period between seeking a penalty (through settlement or litigation) and the final penalty assessment¹⁴ covers more than one penalty-adjustment cycle (for example, where a complaint is filed on

¹² The statutory cost-of-living adjustment multiplier is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2017 exceeds the CPI-U for the month of October 2016. The October 2017 CPI-U was 246.663 and the October 2016 CPI-U was 241.729, yielding an increase of 1.02041.

¹³ If a respondent/defendant challenges the validity of any statutory maximum penalty amount, as adjusted in 40 C.F.R. Part 19, please notify the Office of Civil Enforcement of the challenge, so that OECA, the Region and the U.S. Department of Justice, as appropriate, can coordinate our response before it is filed.

¹⁴ Note that enforcement personnel can only *seek* penalties. *Assessment* of penalties is effective in a formal administrative action once a final penalty order is filed with the Hearing Clerk, 40 C.F.R. §§ 22.31 and 22.6, or in civil judicial cases once the court enters a consent decree or issues a judgment awarding penalties.

December 15, 2016, but the final penalty order is not filed with the Hearing Clerk until April 1, 2018), the case team would have discretion to modify the penalty amount sought (for example, to be consistent with the penalty amounts in the most recent annual inflation adjustment rule or guidance). But such modifications would *not* be expected where doing so would be:

- a. unnecessary to achieve sufficient deterrence; and
- b. *either* inappropriately disruptive¹⁵ *or* contrary to principles of judicial economy (for example, where the case has already gone to hearing based on previous penalty amounts).

In a settlement context, if defendants or respondents have signed a consent decree or consent agreement, the EPA would not expect the case team to renegotiate the penalty amount due to subsequent inflation adjustments. Prior to any such formal written settlement commitment (for example, where the parties may have reached an agreement in principle), case teams have discretion to decide whether to modify their penalty demand due to subsequent inflation adjustments (for example, depending on how far along the negotiations have progressed, the likely impact of an increased penalty on negotiations, the case team's evaluation of the likelihood that any informal agreements will not be consummated, and/or other factors).

VI. Further Information

Our goal in issuing this guidance is to make these penalty policy modifications easy to implement, but if you have any questions concerning this memorandum, please contact David Smith-Watts of the Office of Civil Enforcement at (202) 564-4083 or by email at smith-watts.david@epa.gov.

cc: Lawrence Starfield, Principal Deputy Assistant Administrator, OECA
Patrick Traylor, Deputy Assistant Administrator, OECA
Regional Counsels
Director, Office of Environmental Stewardship, Region I
Director, Division of Enforcement and Compliance Assurance, Region II
Director, Office of Enforcement, Compliance, and Environmental Justice, Region III
Director, Air, Pesticides and Toxics Management Division, Region IV
Director, Office of Enforcement and Compliance Assurance, Region V
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Enforcement Coordination Office, Region VII

¹⁵ Such disruption could be to settlement negotiations, or to other case efforts such as creating an undue burden on the EPA's resources. If the EPA has not made a penalty demand or offer, a disruptive impact on negotiations is less likely where the penalty is recalculated to be consistent with the most recent inflation-adjustment amounts. It is possible, however, that a recalculation would be unduly burdensome and disruptive to the case team's efforts where, for example, there are an extremely large number of violations, the penalty calculation is complex, and/or where contractor resources are needed to perform such a calculation. In such circumstances, the case team would have discretion to determine that recalculating the penalty is not warranted even though the EPA has not yet made a penalty demand or offer.

Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII
Director, Enforcement Division, Region IX
Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X
Regional Media Division Directors
Regional Superfund Enforcement Directors
Regional Enforcement Coordinators
All OECA Employees
Tom Mariani, Chief, DOJ-EES
Deputy and Assistant Chiefs, DOJ-EES
Kathie Stein, Environmental Appeals Judge
Susan Biro, Chief Administrative Law Judge
Regional Judicial Officers

Attachments (2)

1. Table A: Chart Reflecting Inflation Adjustment Multipliers
2. Rule promulgated in the *Federal Register* on January 10, 2018

Table A: Chart Reflecting Penalty Policy Inflation Adjustment Multipliers

| Applicable Penalty Policy | Year Issued | Inflation Adjustment Multiplier as of January 15, 2018 |
|--|-------------|--|
| CWA | | |
| <u>Interim Clean Water Act Settlement Penalty Policy</u> | 1995 | 1.60484 |
| <u>Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act</u> | 1998 | 1.50405 ¹⁶ |
| <u>CWA Section 404 Settlement Penalty Policy</u> | 2001 | 1.38809 |
| <u>Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Stormwater Requirements</u> | 2008 | 1.13894 |
| SDWA | | |
| <u>UIC Program Judicial and Administrative Order Settlement Penalty Policy</u> | 1993 | 1.69296 |
| <u>New Public Water System Supervision Program Settlement Penalty Policy</u> | 1994 | 1.64993 |

¹⁶ Case teams should apply the multiplier of 1.84767 to the per-barrel discharge penalty amounts in the last column of the penalty matrix on page 11. This is an appropriate multiplier because such civil penalties under CWA § 311(b)(7)(A) & (D) concern environmental exposure (*i.e.*, the discharge of oil and hazardous substances), and because the per-barrel penalty matrix column contained in the 1998 penalty policy reflects the statutory maximum penalty amounts in effect when this penalty authority was enacted in 1990. It is important for the penalty matrix to retain a maximum per-barrel penalty policy amount that equals the current statutory maximum and to increase the other penalty policy matrix cells proportionally by the same inflation adjustment multiplier.

| CAA – Accidental Release Prevention/Risk Management Program | | |
|---|------|-----------------------|
| <u>Final Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68</u> | 2012 | 1.06635 |
| CAA – Stationary Source | | |
| <u>Clean Air Act Stationary Source Civil Penalty Policy</u> | 1991 | 1.79523 |
| <u>Appendix I – Penalty Policy for Violation of Permit Requirements</u> | 1987 | 2.13933 |
| <u>Appendix II - Vinyl Chloride Civil Penalty Policy</u> | 1985 | 2.26922 |
| <u>Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy</u> | 1992 | 1.73952 |
| <u>Appendix IV - Clean Air Act Penalty Policy as Applied to Stationary Sources of Volatile Organic Compounds (VOC) Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance</u> | 1987 | 1.79523 ¹⁷ |
| <u>Appendix VI - Leak Detection and Repair Penalty Policy</u> | 2012 | 1.06635 |
| <u>Appendix VII – Penalty Policy for New Residential Wood Heaters</u> | 1989 | 1.96388 |

¹⁷ For violations governed by Appendix IV, the EPA is using the same multiplier that applies to the 1991 “*Clean Air Act Stationary Source Civil Penalty Policy*” because the gravity-based component of such violations is calculated using the 1991 policy.

| | | |
|---|------|---------|
| <u>Appendix VIII - Clean Air Act Civil Penalty Policy Applicable to Persons Who Manufacture or Import Controlled Substances in Amounts Exceeding Allowances Properly Held Under 40 C.F.R. Part 82: Protection of Stratospheric Ozone</u> | 1990 | 1.84767 |
| <u>Appendix IX - Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of the Stratospheric Ozone, Subpart B: Servicing of Motor Vehicle Air Conditioners</u> | 1993 | 1.69296 |
| <u>Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant</u> | 1994 | 1.64993 |
| <u>Appendix XI - National Petroleum Refinery Initiative Implementation: Application of Clean Air Action Stationary Source Penalty Policy for Violations of Benzene Waste Operations NESHAP Requirements</u> | 2007 | 1.18057 |
| <u>EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington. 40 C.F.R. Part 49</u> | 2008 | 1.13894 |
| CAA – Mobile Source | | |
| <u>Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements</u> | 2009 | 1.14103 |
| <u>Clean Air Act Mobile Source Fuels Civil Penalty Policy Title II of the Clean Air Act --40 C.F.R. Part 80 Fuels Standards Requirements</u> | 2016 | 1.03711 |

| | | |
|---|------|-----------------------|
| North American and U.S. Caribbean Sea Emissions Control Areas Penalty Policy for Violations by Ships of the Sulfur in Fuel Standard and Related Provisions | 2015 | 1.03711 |
| Civil Penalty Policy for Administrative Hearings | 1993 | 1.69296 |
| RCRA | | |
| RCRA Civil Penalty Policy | 2003 | 1.53790 ¹⁸ |
| Guidance on the Use of Section 7003 of RCRA | 1997 | 2.64426 ¹⁹ |
| Guidance for Federal Field Citation Enforcement | 1993 | 1.69296 |
| U.S. EPA Penalty Guidance for Violations of UST Regulations | 1990 | 1.84767 |
| CERCLA | | |
| Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders | 1997 | 2.03299 ²⁰ |
| CERCLA & EPCRA | | |
| Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act | 1999 | 1.46649 |

¹⁸ The 2003 RCRA civil penalty policy contains the applicable narrative text that practitioners should continue to use.

¹⁹ For RCRA section 7003(b) penalties, the EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations, *i.e.*, the penalty policy maximum equals the statutory maximum of \$14,543.

²⁰ For CERCLA section 106(b)(1) penalties, the EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations, *i.e.*, the penalty policy maximum equals the statutory maximum of \$55,907.

| EPCRA | | |
|---|------|---|
| Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990), February 24, 2017 (Amended) | 2017 | 1.03711 ²¹ |
| FIFRA | | |
| FIFRA Enforcement Response Policy (FIFRA ERP) | 2009 | 1.14103 |
| Appendix E to FIFRA ERP - Enforcement Response Policy for FIFRA Section 7(c): Establishment Reporting Requirements | 2010 | Use the 2009 FIFRA ERP and the 1.14103 multiplier |
| Appendix F to FIFRA ERP - Interim Final Penalty Policy for the Worker Protection Standard | 1997 | Use the 2009 FIFRA ERP and the 1.14103 multiplier |
| Appendix G to FIFRA ERP - Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act Good Laboratory Practice (GLP) Regulations | 1991 | Use the 2009 FIFRA ERP and the 1.14103 multiplier |
| Appendix H to the FIFRA ERP - Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations | 2012 | Use the 2009 FIFRA ERP and the 1.14103 multiplier |
| TSCA | | |
| Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substance Control Act | 1980 | 1.55567 |

²¹ On February 24, 2017, the EPCRA Enforcement Response Policy was amended in accordance with the 2016 Civil Monetary Penalty Inflation Adjustment Rule. The current penalty policy maximum amount of \$40,779 is multiplied by 1.03711 (the CPI-U adjustment from October 2015 to October 2017) to yield a new maximum amount of \$42,292.

| | | |
|---|------|-----------------------|
| Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13 | 1999 | 1.55567 ²² |
| Amendment to the TSCA Section 5 Enforcement Response Policy – Penalty Limit for Untimely NOC Submissions | 1993 | 1.55567 |
| Enforcement Response Policy for TSCA §4 Test Rules | 1986 | 1.55567 |
| Final TSCA GLP Enforcement Response Policy | 1985 | 1.55567 |
| TSCA – Asbestos | | |
| Enforcement Response Policy for the Asbestos Model Accreditation Plan (MAP) – Addendum to the AHERA ERP | 1998 | 1.50405 |
| Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act | 1989 | 1.96388 |
| Enforcement Response Policy for Asbestos Abatement Projects: Worker Protection Rule | 1989 | 1.55567 |
| TSCA – Lead-Based Paint | | |
| Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education (PRE) Rule; Renovation, Repair and Painting (RRP) Rule; and Lead-Based Paint Activities (LBPA) Rule | 2010 | 1.03711 |

²² The “Penalty Matrix For Violations Occurring After January 30, 1997” on page 8 of this policy should be ignored. For all violations governed by this policy, the multiplier should be applied to the penalty amounts in the “Penalty Matrix For Violations Occurring On or Before January 30, 1997” found on the same page.

| | | |
|--|------|---------|
| Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy | 2007 | 1.58136 |
| TSCA – PCBs | | |
| Polychlorinated Biphenyls (PCB) Penalty Policy | 1990 | 1.55567 |

is incorporated by reference in the Code of Federal Regulations, and thus more effective in supporting USPS efforts related to compliance and enforcement. The Postal Service expects that incorporation by reference of Publication 52 in the *Code of Federal Regulations*, will increase the visibility of the mailing standards contained in Publication 52 and thereby maximize their effectiveness and usefulness.

Since their removal from the DMM, the mailing standards provided in Publication 52 have undergone few changes of significance; indeed, several of those changes have expanded the options available to HAZMAT mailers. With regard to changes having a wider impact on mailers, such as those required to conform Publication 52 to the revised standards for the shipment of lithium batteries established by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the International Civil Aviation Organization (ICAO), the Postal Service has been careful to provide advance notice to interested parties, with an opportunity to comment, and to shape the final standards in response to the comments received. *See, e.g.* 82 FR 11372 (February 22, 2017), and 82 FR 34712 (July 26, 2017). Relating to violations of mailing standards for hazardous materials, the Postal Service currently has civil enforcement authority granted by the Postal Accountability and Enhancement Act of 2006, and authority to assess criminal penalties under 18 U.S.C. 1716. As a result, the Postal Service believes that the incorporation by reference of Publication 52 should have little or no impact on mailers of hazardous, restricted, or perishable materials, and the Postal Service would expect few comments in response to a proposed rule. Accordingly, the Postal Service has chosen to publish only a final rule in support of this action.

The Postal Service further believes that incorporation by reference of Publication 52 is justified in view of the unique qualities of the publication, including its length, the detailed description of conditions relating to the mailing of hazardous, restricted, or perishable materials, and the presence of numerous color figures and images in the document. In addition, the potential for serious injury to Postal Service employees and the general public, as well as the potential for damage to USPS equipment and other assets resulting from improperly prepared, packaged, or marked hazardous materials, provide support for the incorporation by reference of a separate

publication dealing specifically with such matters.

List of Subjects in 39 CFR Part 113

Hazardous, restricted, and perishable mail, Incorporation by reference.

■ In consideration of the matters discussed above, the Postal Service adds new 39 CFR part 113 as follows:

PART 113—HAZARDOUS, RESTRICTED, AND PERISHABLE MAIL

Sec.

113.1 Scope and purpose.

113.2 Incorporation by reference.

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

§ 113.1 Scope and purpose.

This part applies to the mailing and shipment of hazardous, restricted, and perishable materials. In order to mail hazardous, restricted, and perishable materials, mailers must properly prepare their mailings in accordance with the standards contained in USPS Publication 52 (incorporated by reference, see § 113.2).

§ 113.2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection by appointment only, during normal hours of operation, at the U.S. Postal Service Library, 475 L'Enfant Plaza West SW, Washington, DC 20260–1641 (call 202–268–2906), and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) United States Postal Service, Product Classification Office, USPS Headquarters, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5013: <http://pe.usps.com/text/pub52/welcome.htm>.

(1) *Publication 52, Hazardous, Restricted and Perishable Mail, dated August 2017, IBR approved for § 113.1.*

(2) [Reserved]

Stanley F. Mires,
Attorney, Federal Compliance.

[FR Doc. 2018–00266 Filed 1–9–18; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 19

[FRL–9972–92–OECA]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of statutory civil monetary penalty amounts under the statutes 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 statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law. The rule does not necessarily revise the penalty amounts that EPA chooses to seek pursuant to its civil penalty policies in a particular case. EPA’s civil penalty policies, which guide enforcement personnel in how to exercise EPA’s 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 on January 15, 2018.

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 1990, federal agencies have been required to issue regulations adjusting for inflation the statutory civil penalties¹ that can be imposed under

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—(A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.”

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 penalties every 4 years, and to adjust the statutory civil penalty amounts for inflation if the increase met the DCIA's adjustment methodology. In accordance with the DCIA, EPA reviewed and, as appropriate, adjusted the civil 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 requires agencies to: (1) Adjust the level of statutory civil penalties with an initial "catch-up" adjustment through an interim final rulemaking; and (2) beginning January 15, 2017, make subsequent annual adjustments for inflation. The purpose of the 2015 Act is to maintain the deterrent effect of civil 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, EPA issued a catch up rule on July 1, 2016, which was effective August 1, 2016 (81 FR 43091), and EPA made its first annual adjustment on January 12, 2017, which was effective January 15, 2017 (82 FR 3633). Today's rule implements the second annual penalty inflation adjustments mandated by the 2015 Act. Section 4 of the 2015 Act requires each federal agency to publish annual adjustments to all civil penalties under the laws implemented by that agency. These annual adjustments are required to be published by January 15 of each year. The 2015 Act describes the method for calculating the adjustments. Each statutory maximum civil monetary penalty is multiplied by the cost-of-living adjustment, which is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2017 exceeds the CPI-U for the month of October 2016.

With this rule, the new statutory maximum (or minimum³) penalty levels

listed in the sixth column of Table 2 of 40 CFR 19.4 will apply to all civil penalties assessed on or after January 15, 2018, for violations that occurred after November 2, 2015, when the 2015 Act was enacted. The former maximum statutory civil penalty levels, which are in the fifth column of Table 2 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 15, 2017 but before January 15, 2018. The statutory penalty levels for violations that occurred after November 2, 2015, where the penalties were assessed on or after August 1, 2016 but before January 15, 2017, are codified in the fourth column of Table 2 to 40 CFR 19.4. The statutory civil penalty levels that apply to violations that occurred on or before November 2, 2015, are codified at Table 1 to 40 CFR 19.4.

The formula for determining the cost-of-living or inflation adjustment to statutory civil penalties consists of the following steps:

Step 1: The cost-of-living adjustment multiplier for 2018, based on the CPI-U of October 2017, is 1.02041.⁴ Multiply 1.02041 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 Procedures Act

Section 4 of the 2015 Act directs federal agencies to publish the second annual adjustments no later than January 15, 2018. In accordance with section 553 of the Administrative Procedures 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

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 Office of Management and Budget Memorandum, *Implementation of the Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 2015* (OMB Memorandum M-18-03) at p. 1 (December 15, 2017).

the annual inflation adjustments "notwithstanding section 553" of the APA. According to OMB guidance issued to Federal agencies on the implementation of the 2018 annual adjustment,⁵ the phrase "notwithstanding section 553" means that "the public procedure the APA generally provides—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment." Consistent with the language of the 2015 Act and OMB's implementation guidance, this rule is not subject to notice and an opportunity for public comment and will be effective immediately upon publication.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.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 the Office of Management and Budget (OMB) for review.

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 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.

⁵ See OMB Memorandum M-18-03 at p. 4.

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

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

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 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, 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 penalty levels to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. The calculation of the increases is formula-driven and prescribed by statute, and 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.

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 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 2015 Act directs Federal agencies to publish their annual penalty inflation adjustments “notwithstanding section 553 [of the APA].” Because OMB has instructed Federal agencies that this provision means that “notice, an opportunity for comment, and a delay in the effective date” are not required for agencies to issue regulations implementing the annual adjustment,⁶ EPA finds that the APA’s notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest.

List of Subjects in 40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

Dated: January 3, 2018.

E. Scott Pruitt,
Administrator.

For the reasons set out in the preamble, 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: Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104–134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Pub. L. 105–362, title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 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.

The statutory penalty levels in the last column of Table 1 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 penalty levels set forth in the fourth column of Table 2 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed on or after August 1, 2016 and before January 15, 2017. The statutory civil penalty levels set forth in the fifth column of Table 2 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed after January 15, 2017 but before January 15, 2018. The statutory civil penalty levels set forth in the sixth and last column of Table 2 of § 19.4 apply to all violations which occur or occurred after November 2, 2015, where the penalties are assessed after January 15, 2018.

■ 3. In § 19.4, revise the introductory text and table 2 to read as follows:

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

Table 1 to § 19.4 sets out the statutory civil penalty provisions of statutes administered by EPA, with the original statutory civil penalty levels, as enacted, and the operative statutory civil 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 2 to § 19.4 sets out the statutory civil penalty provisions of statutes administered by EPA, with the third column displaying the original statutory civil penalty levels, as enacted. The fourth column of Table 2 displays the operative statutory civil penalty levels where penalties were assessed on or after August 1, 2016 but before January 15, 2017, for violations that occurred after November 2, 2015. The fifth column displays the operative statutory civil penalty levels

⁶ See OMB Memorandum M–18–03 at p. 4.

where penalties are assessed on or after January 15, 2017 but before January 15, 2018, for violations that occur or occurred after November 2, 2015. The

sixth and last column displays the operative statutory civil penalty levels where penalties are assessed on or after January 15, 2018, for violations that

occur or occurred after November 2, 2015.
* * * * *

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

| U.S. Code citation | Environmental statute | Statutory civil penalties, as enacted | Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after August 1, 2016 but before January 15, 2017 | Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2017 but before January 15, 2018 | Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018 |
|--|---|---------------------------------------|--|--|--|
| 7 U.S.C. 136l(a)(1) | FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA). | \$5,000 | \$18,750 | \$19,057 | \$19,446 |
| 7 U.S.C. 136l(a)(2) ¹ | FIFRA | 1,000/500/1,000 | 2,750/1,772/2,750 | 2,795/1,801/2,795 | 2,852/1,838/2,795 |
| 15 U.S.C. 2615(a)(1) | TOXIC SUBSTANCES CONTROL ACT (TSCA). | 25,000 | 37,500 | 38,114 | 38,892 |
| 15 U.S.C. 2647(a) | TSCA | 5,000 | 10,781 | 10,957 | 11,181 |
| 15 U.S.C. 2647(g) | TSCA | 5,000 | 8,908 | 9,054 | 9,239 |
| 31 U.S.C. 3802(a)(1) | PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA). | 5,000 | 10,781 | 10,957 | 11,181 |
| 31 U.S.C. 3802(a)(2) | PFCRA | 5,000 | 10,781 | 10,957 | 11,181 |
| 33 U.S.C. 1319(d) | CLEAN WATER ACT (CWA) | 25,000 | 51,570 | 52,414 | 53,484 |
| 33 U.S.C. 1319(g)(2)(A) | CWA | 10,000/25,000 | 20,628/51,570 | 20,965/52,414 | 21,393/53,484 |
| 33 U.S.C. 1319(g)(2)(B) | CWA | 10,000/125,000 | 20,628/257,848 | 20,965/262,066 | 21,393/267,415 |
| 33 U.S.C. 1321(b)(6)(B)(i) | CWA | 10,000/25,000 | 17,816/44,539 | 18,107/45,268 | 18,477/46,192 |
| 33 U.S.C. 1321(b)(6)(B)(ii) | CWA | 10,000/125,000 | 17,816/222,695 | 18,107/226,338 | 18,477/230,958 |
| 33 U.S.C. 1321(b)(7)(A) | CWA | 25,000/1,000 | 44,539/1,782 | 45,268/1,811 | 46,192/1,848 |
| 33 U.S.C. 1321(b)(7)(B) | CWA | 25,000 | 44,539 | 45,268 | 46,192 |
| 33 U.S.C. 1321(b)(7)(C) | CWA | 25,000 | 44,539 | 45,268 | 46,192 |
| 33 U.S.C. 1321(b)(7)(D) | CWA | 100,000/3,000 | 178,156/5,345 | 181,071/5,432 | 184,767/5,543 |
| 33 U.S.C. 1414b(d)(1) | MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA). | 600 | 1,187 | 1,206 | 1,231 |
| 33 U.S.C. 1415(a) | MPRSA | 50,000/125,000 | 187,500/247,336 | 190,568/251,382 | 194,457/256,513 |
| 33 U.S.C. 1901 note (see 1409(a)(2)(A)). | CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO). | 10,000/25,000 | 13,669/34,172 | 13,893/34,731 | 14,177/35,440 |
| 33 U.S.C. 1901 note (see 1409(a)(2)(B)). | CACSO | 10,000/125,000 | 13,669/170,861 | 13,893/173,656 | 14,177/177,200 |
| 33 U.S.C. 1901 note (see 1409(b)(1)). | CACSO | 25,000 | 34,172 | 34,731 | 35,440 |
| 33 U.S.C. 1908(b)(1) | ACT TO PREVENT POLLUTION FROM SHIPS (APPS). | 25,000 | 70,117 | 71,264 | 72,718 |
| 33 U.S.C. 1908(b)(2) | APPS | 5,000 | 14,023 | 14,252 | 14,543 |
| 42 U.S.C. 300g-3(b) | SAFE DRINKING WATER ACT (SDWA) | 25,000 | 53,907 | 54,789 | 55,907 |
| 42 U.S.C. 300g-3(g)(3)(A) | SDWA | 25,000 | 53,907 | 54,789 | 55,907 |
| 42 U.S.C. 300g-3(g)(3)(B) | SDWA | 5,000/25,000 | 10,781/37,561 | 10,957/38,175 | 11,181/38,954 |
| 42 U.S.C. 300g-3(g)(3)(C) | SDWA | 25,000 | 37,561 | 38,175 | 38,954 |
| 42 U.S.C. 300h-2(b)(1) | SDWA | 25,000 | 53,907 | 54,789 | 55,907 |
| 42 U.S.C. 300h-2(c)(1) | SDWA | 10,000/125,000 | 21,563/269,535 | 21,916/273,945 | 22,363/279,536 |
| 42 U.S.C. 300h-2(c)(2) | SDWA | 5,000/125,000 | 10,781/269,535 | 10,957/273,945 | 11,181/279,536 |
| 42 U.S.C. 300h-3(c) | SDWA | 5,000/10,000 | 18,750/40,000 | 19,057/40,654 | 19,446/41,484 |
| 42 U.S.C. 300i(b) | SDWA | 15,000 | 22,537 | 22,906 | 23,374 |
| 42 U.S.C. 300i-1(c) | SDWA | 100,000/1,000,000 | 131,185/1,311,850 | 133,331/1,333,312 | 136,052/1,360,525 |
| 42 U.S.C. 300j(e)(2) | SDWA | 2,500 | 9,375 | 9,528 | 9,722 |
| 42 U.S.C. 300j-4(c) | SDWA | 25,000 | 53,907 | 54,789 | 55,907 |
| 42 U.S.C. 300j-6(b)(2) | SDWA | 25,000 | 37,561 | 38,175 | 38,954 |
| 42 U.S.C. 300j-23(d) | SDWA | 5,000/50,000 | 9,893/98,935 | 10,055/100,554 | 10,260/102,606 |
| 42 U.S.C. 4852d(b)(5) | RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992. | 10,000 | 16,773 | 17,047 | 17,395 |
| 42 U.S.C. 4910(a)(2) | NOISE CONTROL ACT OF 1972 | 10,000 | 35,445 | 36,025 | 36,760 |
| 42 U.S.C. 6928(a)(3) | RESOURCE CONSERVATION AND RECOVERY ACT (RCRA). | 25,000 | 93,750 | 95,284 | 97,229 |
| 42 U.S.C. 6928(c) | RCRA | 25,000 | 56,467 | 57,391 | 58,562 |
| 42 U.S.C. 6928(g) | RCRA | 25,000 | 70,117 | 71,264 | 72,718 |
| 42 U.S.C. 6928(h)(2) | RCRA | 25,000 | 56,467 | 57,391 | 58,562 |
| 42 U.S.C. 6934(e) | RCRA | 5,000 | 14,023 | 14,252 | 14,543 |
| 42 U.S.C. 6973(b) | RCRA | 5,000 | 14,023 | 14,252 | 14,543 |
| 42 U.S.C. 6991e(a)(3) | RCRA | 25,000 | 56,467 | 57,391 | 58,562 |
| 42 U.S.C. 6991e(d)(1) | RCRA | 10,000 | 22,587 | 22,957 | 23,426 |
| 42 U.S.C. 6991e(d)(2) | RCRA | 10,000 | 22,587 | 22,957 | 23,426 |
| 42 U.S.C. 7413(b) | CLEAN AIR ACT (CAA) | 25,000 | 93,750 | 95,284 | 97,229 |
| 42 U.S.C. 7413(d)(1) | CAA | 25,000/200,000 | 44,539/356,312 | 45,268/362,141 | 46,192/369,532 |
| 42 U.S.C. 7413(d)(3) | CAA | 5,000 | 8,908 | 9,054 | 9,239 |
| 42 U.S.C. 7524(a) | CAA | 25,000/2,500 | 44,539/4,454 | 45,268/4,527 | 46,192/4,619 |
| 42 U.S.C. 7524(c)(1) | CAA | 200,000 | 356,312 | 362,141 | 369,532 |
| 42 U.S.C. 7545(d)(1) | CAA | 25,000 | 44,539 | 45,268 | 46,192 |
| 42 U.S.C. 9604(e)(5)(B) | COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA). | 25,000 | 53,907 | 54,789 | 55,907 |
| 42 U.S.C. 9606(b)(1) | CERCLA | 25,000 | 53,907 | 54,789 | 55,907 |
| 42 U.S.C. 9609(a)(1) | CERCLA | 25,000 | 53,907 | 54,789 | 55,907 |

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

| U.S. Code citation | Environmental statute | Statutory civil penalties, as enacted | Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after August 1, 2016 but before January 15, 2017 | Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2017 but before January 15, 2018 | Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018 |
|--------------------------|---|---------------------------------------|--|--|--|
| 42 U.S.C. 9609(b) | CERCLA | 25,000/75,000 | 53,907/161,721 | 54,789/164,367 | 55,907/167,722 |
| 42 U.S.C. 9609(c) | CERCLA | 25,000/75,000 | 53,907/161,721 | 54,789/164,367 | 55,907/167,722 |
| 42 U.S.C. 11045(a) | EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA). | 25,000 | 53,907 | 54,789 | 55,907 |
| 42 U.S.C. 11045(b)(1)(A) | EPCRA | 25,000 | 53,907 | 54,789 | 55,907 |
| 42 U.S.C. 11045(b)(2) | EPCRA | 25,000/75,000 | 53,907/161,721 | 54,789/164,367 | 55,907/167,722 |
| 42 U.S.C. 11045(b)(3) | EPCRA | 25,000/75,000 | 53,907/161,721 | 54,789/164,367 | 55,907/167,722 |
| 42 U.S.C. 11045(c)(1) | EPCRA | 25,000 | 53,907 | 54,789 | 55,907 |
| 42 U.S.C. 11045(c)(2) | EPCRA | 10,000 | 21,563 | 21,916 | 22,363 |
| 42 U.S.C. 11045(d)(1) | EPCRA | 25,000 | 53,907 | 54,789 | 55,907 |
| 42 U.S.C. 14304(a)(1) | MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT). | 10,000 | 15,025 | 15,271 | 15,583 |
| 42 U.S.C. 14304(g) | BATTERY ACT | 10,000 | 15,025 | 15,271 | 15,583 |

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).

[FR Doc. 2018–00287 Filed 1–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0085; FRL–9972–85–Region 4]

Air Plan Approval; NC; Open Burning and Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Due to adverse comments received, the Environmental Protection Agency (EPA) is amending the North Carolina State Implementation Plan (SIP) to remove some provisions made effective through the direct final rule that was published on July 18, 2017. EPA stated that if adverse comments were received by the close of the comment period, the rule would be withdrawn and not take effect, or if adverse comments were received on an amendment, paragraph, or section of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. EPA received adverse comments on two specific SIP revisions. Therefore, EPA is removing only the portions of the SIP related to those two revisions.

DATES: This rule is effective January 10, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–0085. All documents in the docket are listed on the www.regulations.gov

website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Ward can be reached via telephone at (404) 562–9140, or via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION: On July 18, 2017, EPA published a direct final rule (82 FR 32767) approving several revisions to the North Carolina SIP. The revisions consisted of changes to or the addition of the following regulations: 15A NCAC Subchapter 2D—Air

Pollution Control Requirements, Section .0101, *Definitions*; Section .0103, *Copies of Referenced Federal Regulations*; Section .1901 *Purpose, Scope, and Impermissible Open Burning Section*; .1902, *Definitions*; Section .1903, *Permissible Open Burning Without An Air Quality Permit*; Section .2001, *Purpose, Scope, and Applicability*; and 15A NCAC Subchapter 2Q—Air Quality Permits, Section .0103, *Definitions*; Section .0105, *Copies of Referenced Documents*; Section .0304, *Applications*; Section .0305, *Application Submittal Content*; Section .0806, *Cotton Gins*; Section .0808, *Peak Shaving Generators*; and Section .0810, *Air Curtain Burners*. On the same day, EPA published proposed rule (82 FR 32782), proposing approval of those same revisions to the North Carolina SIP and providing a 30-day comment period for both the direct final rule and the proposed rule.¹ The direct final rule explained that if EPA received adverse comments, the Agency would withdraw the relevant portion(s) of the direct final action. EPA received adverse comments on the portions of the rulemaking related to the North Carolina regulations 15A NCAC Subchapter 2Q—Air Quality Permits, Section .0808, *Peak Shaving Generators*, and Section .0810, *Air Curtain Burners*, only. However, EPA was not able to withdraw these portions of the direct final action before the action became effective. Therefore, EPA is amending § 52.1770 by removing the portions of the SIP related to these two North Carolina regulations. EPA is not

¹ On September 6, 2017 (82 FR 42055), EPA reopened the comment period for the proposed rule, with comments due on or before September 21, 2017.