

## **IMPORTANT NOTE**

**The following 7/27/16 guidance establishing penalty policy inflation amounts and the 7/1/16 penalty inflation rule (81 Fed. Reg. 43091) establishing statutory penalty amounts are no longer in effect.** The currently applicable penalty policy inflation amounts and most recent penalty inflation rule can be found on EPA's "Enforcement Policy, Guidance &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

JUL 27 2016

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)

**FROM:** Cynthia Giles  
Assistant Administrator *Cynthia Giles*

**TO:** Regional Administrators  
Deputy Regional Administrators

Attached is the 2016 Civil Monetary Penalty Inflation Adjustment Rule (2016 Rule), which was published on July 1, 2016, and is effective on August 1, 2016. 81 Fed. Reg. 43,091 (July 1, 2016). This memorandum amends our civil penalty policies to implement the 2016 Rule. Specifically, this memorandum:

- (1) supersedes previous inflation-based amendments to our penalty policies issued in 1997, 2004, and 2008, and partially supersedes our 2013 policy amendments;<sup>1</sup>
- (2) summarizes the Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act);<sup>2</sup>
- (3) describes how EPA is amending its civil penalty policies to increase penalties by the amount of inflation accrued since the effective date of the applicable penalty policy; and
- (4) provides guidance to case teams.

This memorandum does not modify EPA's Expedited Settlement Agreement penalty policies nor does it modify the non-penalty dollar amounts in civil penalty policies (such as the definition of what is an "insignificant" or "de minimis" economic benefit of noncompliance).

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<sup>1</sup> As noted in Section I of this memorandum, EPA's 2013 guidance still applies to cases with violations occurring on or before November 2, 2015.

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

## **I. Background and Effective Date**

The 2015 Act was signed into law on November 2, 2015, in order to improve the effectiveness of statutory civil monetary penalties and to maintain their deterrent effect, thereby promoting compliance with the law. The 2015 Act requires an initial catch-up adjustment, which EPA is implementing through the attached 2016 Rule. Concurrent with the effective date of the 2016 Rule, this guidance is effective on August 1, 2016, as follows:

- In cases where the violations occurred entirely *on or before* November 2, 2015, enforcement practitioners should use the inflation adjustment policy and multipliers contained in the guidance memorandum dated December 6, 2013 (*see* <https://www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf>).
- In cases where the violations occurred entirely *after* November 2, 2015, enforcement practitioners should use only this inflation adjustment policy and its multipliers.
- In cases where violations occurred *both before and after* such date, enforcement practitioners should use the inflation adjustment policy and multipliers contained in the 2013 guidance memorandum for the violations that occurred on or before November 2, 2015, and should use this inflation adjustment policy and its multipliers for the violations that occurred after November 2, 2015.

In addition to the initial catch-up adjustment, the 2015 Act requires federal agencies to issue rules adjusting statutory penalty amounts for inflation by January 15<sup>th</sup> of each year. Concurrent with those annual statutory penalty adjustments, the Office of Enforcement and Compliance Assurance (OECA) expects to modify its penalty policies each year. For efficiency of administration, however, we do not plan to globally modify our penalty policies for inflation on January 15, 2017, when the statutory penalty amounts are first required to be adjusted annually for inflation. Instead, we intend to globally adjust the penalty policy amounts for inflation annually beginning on or shortly before January 15, 2018.

Note that some media enforcement programs may modify their penalty policies individually, and any such modifications may supersede application of this guidance for that program. Note also that any possible future statutory penalty increases do not automatically modify EPA's penalty policies, and that practitioners should rely on the multipliers in Table A until the applicable penalty policy is modified.

## **II. Amendments to the EPA's Civil Penalty Policies**

While not required by the 2015 Act, we believe that amending our civil penalty policies to account for inflation is consistent both with the purposes behind the 2015 Act, and with our past practice of adjusting our penalty policies for inflation. Accordingly, whether used in

administrative litigation or in settlement, all civil penalty policies other than EPA's Expedited Settlement Agreement penalty policies are now modified to apply the guidelines set forth below.

Inflation Adjustments Apply Only to the Gravity-Based Portion of Penalties: We are not modifying the long-standing approach of calculating economic benefit separately from the gravity-based amount, since economic benefit calculations already take inflation into account. The inflation adjustments in this guidance only impact the gravity-based portion of the penalty.

Which Civil Penalty Policies Are Applicable: Note that 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 to assess penalties for certain violations. Enforcement practitioners should apply the Inflation Adjustment Multipliers in the attached Table A only to the penalty amounts originally adopted as part of the policies listed in Table A. The Inflation Adjustment Multipliers should not be applied to any subsequent addenda that merely adjusted the penalty amounts for inflation.

How the Inflation Multipliers Are Derived: For most of the penalty policies, the multipliers are based on Consumer Price Index (CPI) data for the year that the narrative version of the penalty policy was issued.<sup>3</sup> In a few instances, where EPA published revised penalty matrices after issuance of the most recent narrative penalty policy, applying such CPI multipliers to the most recent narrative version of the penalty policy would have yielded a maximum penalty amount lower than the amounts specified in the revised penalty matrices. To avoid this result, we adjusted the applicable multipliers upward to reflect an appropriate inflation-related increase.<sup>4</sup> Also, in a few instances, we adjusted the applicable multipliers in order to harmonize the penalty amounts under several penalty policies that were issued on different dates, either because they cover similar violations<sup>5</sup> or for other important reasons.<sup>6</sup>

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<sup>3</sup> EPA is using the same table of OMB-approved CPI multipliers that the 2015 Act required federal agencies to use in calculating inflation-adjusted statutory maximum penalties in the 2016 Rule. But, the particular CPI multiplier that EPA is applying to any given *penalty policy* is generally smaller than the *statutory maximum* penalty multiplier because the 2015 Act directs the use of a multiplier that is based on the year that the relevant *statutory* penalty provision was enacted or last amended by Congress. For example, EPA issued the *Interim Clean Water Act (CWA) Settlement Penalty Policy* in 1995. EPA, therefore, is applying the 1.54742 CPI multiplier for 1995 to violations enforced pursuant to CWA § 309. As applied to the \$25,000 CWA penalty policy maximum amount in effect in 1995, the multiplier yields a newly adjusted CWA § 309 *penalty policy* maximum amount of \$38,686. For purposes of this policy, this is a reasonable inflation-related increase as compared to the \$37,500 CWA maximum amount in effect since 2013, particularly given recent low inflation. This penalty policy maximum amount is lower than the CWA *statutory maximum* penalty of \$51,570 because the statutory penalty amount was last modified in a 1987 law, and the 2015 Act directs the use of the higher 1987 CPI multiplier of 2.06278 in the 2016 Rule to calculate the statutory maximum.

<sup>4</sup> See *infra* note 13 (RCRA civil penalty policy), and note 16 (EPCRA § 313 Enforcement Response Policy).

<sup>5</sup> See *infra* note 21 (regarding the 2007 and 2010 TSCA lead-based paint penalty policies).

<sup>6</sup> See *infra* notes 17 (FIFRA enforcement response policies) and 18 (core TSCA penalty policies).

How to Calculate the Penalties: For each violation occurring after November 2, 2015, calculate the gravity-based penalty using the applicable penalty policies in Table A, then multiply such gravity-based penalties by the corresponding inflation multiplier(s) and round the inflation-adjusted amount to the nearest dollar. Then, add in any possible gravity-based penalty for each violation occurring on or before November 2, 2015, using the guidance memorandum dated December 6, 2013. Apply any appropriate upward or downward adjustments to the gravity-based penalties, based on applicable aggravating or mitigating factors (history of violations, ability to pay, cooperation, etc.). Finally, add in any economic benefit of noncompliance to get the total penalty.<sup>7</sup>

### **III. Penalty Pleading in Administrative Litigation**

Where EPA decides to cite the statutory penalty amount in an administrative pleading (such as in an administrative complaint), the applicable statutory maximum penalty amount in effect for the violations should be used.<sup>8</sup> EPA should cite the statutory 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. 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 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).

### **IV. Administrative Penalty Caps**

Note that, effective August 1, 2016, where EPA seeks administrative penalties in a complaint, amended complaint, or through a 40 C.F.R. § 22.18 settlement, the increased administrative

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<sup>7</sup> If application of the inflation multipliers results in a total gravity-based penalty amount that is greater than the statutory maximum amount, 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 as outlined below in Section IV. Note that penalty amounts greater than those calculated using EPA penalty policies and this guidance may be appropriate in limited circumstances. For example, in a formal administrative enforcement context, 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).

<sup>8</sup> 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.

penalty caps in Table 2 of § 19.4 in the attached 2016 Rule apply if *some or all* of the violations occurred after November 2, 2015. If *all* violations occurred on or before November 2, 2015, the lower administrative penalty caps in Table 1 of § 19.4 in the attached 2016 Rule apply.

## V. Impact on Pending Cases

Case Team Discretion: If the time period between seeking a penalty (through settlement or litigation) and the final penalty assessment<sup>9</sup> covers more than one penalty-adjustment cycle (for example, where a complaint is filed on December 15, 2016, but the final penalty order is not filed with 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 disruptive<sup>10</sup> *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, 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

We believe that the penalty policy modifications in this guidance are faithful to the spirit of the 2015 Act's purpose in maintaining deterrence, should be easy to implement, and will not unduly

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<sup>9</sup> 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.

<sup>10</sup> Such disruption could be to settlement negotiations, or to other case efforts such as creating an undue burden on EPA's resources. If 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 EPA has not yet made a penalty demand or offer.

disrupt ongoing enforcement cases. Any questions concerning this guidance can be directed to Gary Jones of the Office of Civil Enforcement at (202) 564-4002 or by email at [jonesi.gary@epa.gov](mailto:jonesi.gary@epa.gov).

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Regional Superfund Enforcement Directors  
Regional Enforcement Coordinators  
All OECA Employees  
Tom Mariani, Acting Chief, EES, DOJ  
Deputy and Assistant Chiefs, EES, DOJ  
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 *Federal Register* on July 1, 2016

**Table A: Chart Reflecting Penalty Policy Inflation Adjustment Multipliers**

Applicable Penalty Policy	Year Issued	Inflation Adjustment Multiplier as of August 1, 2016
<b>CWA</b>		
<a href="#">Interim Clean Water Act Settlement Penalty Policy</a>	1995	1.54742
<a href="#">Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act</a>	1998	1.45023 <sup>11</sup>
<a href="#">CWA Section 404 Settlement Penalty Policy</a>	2001	1.33842
<a href="#">Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Stormwater Requirements</a>	2008	1.09819
<b>SDWA</b>		
<a href="#">UIC Program Judicial and Administrative Order Settlement Penalty Policy</a>	1993	1.63238
<a href="#">New Public Water System Supervision Program Settlement Penalty Policy</a>	1994	1.59089
<b>CAA – Accidental Release Prevention/Risk Management Program</b>		
<a href="#">Final Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68</a>	2012	1.02819
<b>CAA – Stationary Source</b>		
<a href="#">Clean Air Act Stationary Source Civil Penalty Policy</a>	1991	1.73099

<sup>11</sup> Case teams should apply the 1990 CPI multiplier of 1.78156 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 this 1998 penalty policy based the per-barrel penalty matrix column on 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.

<a href="#"><u>Appendix I – Penalty Policy for Violation of Permit Requirements</u></a>	1987	2.06278
<a href="#"><u>Appendix II - Vinyl Chloride Civil Penalty Policy</u></a>	1985	2.18802
<a href="#"><u>Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy</u></a>	1992	1.67728
<a href="#"><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></a>	1987	1.73099 <sup>12</sup>
<a href="#"><u>Appendix VI - Leak Detection and Repair Penalty Policy</u></a>	2012	1.02819
<a href="#"><u>Appendix VII – Penalty Policy for New Residential Wood Heaters</u></a>	1989	1.89361
<a href="#"><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></a>	1990	1.78156
<a href="#"><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></a>	1993	1.63238
<a href="#"><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></a>	1994	1.59089
<a href="#"><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></a>	2007	1.13833

<sup>12</sup> For violations governed by Appendix IV, 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.

<a href="#">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</a>	2008	1.09819
<b>CAA – Mobile Source</b>		
<a href="#">Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements</a>	2009	1.10020
<a href="#">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</a>	2016	1.00000
<a href="#">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</a>	2015	1.00000
<a href="#">Civil Penalty Policy for Administrative Hearings</a>	1993	1.63238
<b>RCRA</b>		
<a href="#">RCRA Civil Penalty Policy</a>	2003	1.48287 <sup>13</sup>
<a href="#">Guidance on the Use of Section 7003 of RCRA</a>	1997	2.54964 <sup>14</sup>

<sup>13</sup> EPA last modified the RCRA civil penalty policy amounts in a memorandum dated April 6, 2010, but did not revise the 2003 RCRA civil penalty policy. The 2003 RCRA civil penalty policy contains the applicable narrative text that practitioners should continue to use (enforcement practitioners should no longer use the April 2010 memorandum in calculating penalties). But, applying the 2003 CPI inflation multiplier of 1.28561 to the \$27,500 maximum penalty amount in the 2003 policy would have yielded a penalty policy maximum amount of \$35,354, which is *lower* than the current penalty policy maximum amount of \$37,500. EPA believes it would be inappropriate to reduce RCRA penalty policy amounts, particularly given that the 2016 Rule increases RCRA statutory maximum amounts from \$37,500 to \$93,750 pursuant to the 2015 Act's inflation adjustment methodology. To avoid a reduction in the RCRA penalty policy amounts, we used the 2010 RCRA penalty policy amounts as a baseline and determined that using the 2010 CPI multiplier of 1.08745 would yield a maximum penalty policy amount of \$40,779. For purposes of this policy, this is an appropriate upward inflation adjustment from the \$37,500 amount because it reflects inflation since 2010 as measured by the CPI. In order to arrive at that penalty amount using the 2003 RCRA policy, we increased the RCRA penalty policy multiplier to 1.48287.

<sup>14</sup> For RCRA section 7003(b) penalties, 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 \$14,023.

<a href="#">Guidance for Federal Field Citation Enforcement</a>	1993	1.63238
<a href="#">U.S. EPA Penalty Guidance for Violations of UST Regulations</a>	1990	1.78156
<b>CERCLA</b>		
<a href="#">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</a>	1997	1.96025 <sup>15</sup>
<b>CERCLA &amp; EPCRA</b>		
<a href="#">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</a>	1999	1.41402
<b>EPCRA</b>		
<a href="#">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)</a>	2001	1.63116 <sup>16</sup>
<b>FIFRA</b>		
<a href="#">FIFRA Enforcement Response Policy (FIFRA ERP)</a>	2009	1.10020 <sup>17</sup>

<sup>15</sup> For CERCLA section 106(b)(1) penalties, 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 \$53,907.

<sup>16</sup> EPA last adjusted the EPCRA § 313 penalty matrices in a memorandum dated April 6, 2010, but did not revise the 2001 EPCRA § 313 Enforcement Response Policy (ERP). The 2001 EPCRA § 313 ERP contains the applicable narrative text that practitioners should continue to use (enforcement practitioners should no longer use the April 2010 memorandum in calculating penalties). But, applying the 2001 CPI inflation multiplier of 1.33842 to the \$25,000 maximum penalty amount in the 2001 EPCRA § 313 ERP would have yielded a penalty policy maximum amount of \$33,461, which is *lower* than the current penalty policy maximum amount of \$37,500. EPA believes it would be inappropriate to reduce EPCRA § 313 penalty policy amounts, particularly given that the 2016 Rule increases EPCRA § 313 statutory maximum penalties from \$37,500 to \$53,907 pursuant to the 2015 Act's inflation adjustment methodology. To avoid a reduction in the EPCRA § 313 penalty policy amounts, we used the 2010 EPCRA § 313 penalty policy amounts as a baseline and determined that using the 2010 CPI multiplier of 1.08745 would yield a maximum penalty policy amount of \$40,779. For purposes of this policy, this is an appropriate upward inflation adjustment from the \$37,500 amount because it reflects inflation since 2010 as measured by the CPI. In order to arrive at that penalty amount using the 2001 EPCRA § 313 ERP, we increased the EPCRA § 313 ERP multiplier to 1.63116.

Note also that, the 2001 EPCRA § 313 ERP contains not only the original 2001 penalty matrix with a maximum penalty amount of \$27,500, but also a penalty matrix added in 2004 that has an inflation-adjusted maximum of \$32,500, and a penalty matrix added in 2009 with an inflation-adjusted maximum of \$37,500. The multiplier in Table A applies only to the original 2001 penalty matrix. The other matrices should no longer be used.

<sup>17</sup> EPA issued Appendices E, F, G, and H to the FIFRA ERP during different years, but penalties for violations governed by any

<a href="#">Appendix E to FIFRA ERP - Enforcement Response Policy for FIFRA Section 7(c): Establishment Reporting Requirements</a>	2010	Use the 2009 FIFRA ERP and multiplier
<a href="#">Appendix F to FIFRA ERP - Interim Final Penalty Policy for the Worker Protection Standard</a>	1997	Use the 2009 FIFRA ERP and multiplier
<a href="#">Appendix G to FIFRA ERP - Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act Good Laboratory Practice (GLP) Regulations</a>	1991	Use the 2009 FIFRA ERP and multiplier
<a href="#">Appendix H to the FIFRA ERP - Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations</a>	2012	Use the 2009 FIFRA ERP and multiplier
<b>TSCA</b>		
<a href="#">Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substance Control Act</a>	1980	1.50000 <sup>18</sup>
<a href="#">Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13</a>	1999	1.50000 <sup>19</sup>
<a href="#">Amendment to the TSCA Section 5 Enforcement Response Policy – Penalty Limit for Untimely NOC Submissions</a>	1993	1.50000
<a href="#">Enforcement Response Policy for TSCA §4 Test Rules</a>	1986	1.50000
<a href="#">Final TSCA GLP Enforcement Response Policy</a>	1985	1.50000

of those Appendices are assessed using the 2009 FIFRA ERP and, therefore, all should use the 2009 FIFRA ERP multiplier of 1.10020.

<sup>18</sup> We harmonized seven TSCA penalty policy multipliers because all such policies implement the TSCA § 16 penalty authority and the statutory penalty maximum amount for all penalties sought pursuant to TSCA § 16 was amended to be \$37,500 on June 22, 2016. P.L. No: 114-182. Since \$37,500 is 150% of the \$25,000 maximum penalty in the 1980 TSCA § 16 penalty assessment guidance, the harmonized multiplier is 1.50000.

<sup>19</sup> 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.

<b>TSCA – Asbestos</b>		
<a href="#">Enforcement Response Policy for the Asbestos Model Accreditation Plan (MAP) – Addendum to the AHERA ERP</a>	1998	1.45023
<a href="#">Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act</a>	1989	1.89361
<a href="#">Enforcement Response Policy for Asbestos Abatement Projects: Worker Protection Rule</a>	1989	1.50000
<b>TSCA – Lead-Based Paint</b>		
<a href="#">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</a>	2010	1.00000 <sup>20</sup>
<a href="#">Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy</a>	2007	1.52482 <sup>21</sup>
<b>TSCA – PCBs</b>		
<a href="#">Polychlorinated Biphenyls (PCB) Penalty Policy</a>	1990	1.50000

<sup>20</sup> This 1.00000 multiplier applies only to the RRP and LBPA penalty amounts in this policy, and is adopted because the existing penalty matrices in this recently-issued policy are appropriately proportional and already provide sufficient deterrence.

<sup>21</sup> The 2010 “*Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*” and the 2007 “*Section 1018 – Disclosure Response and Penalty Policy*” both penalize violators who fail to provide certain information related to the presence or risk of lead-based paint. Instead of having differing penalty amounts for essentially the same type of deficiency, we have adopted the penalty matrix from the 2007 Section 1018 Disclosure Rule penalty policy in the Pre-Renovation Education Rule component of the 2010 Consolidated Lead-Based Paint penalty. Applying the 2007 CPI inflation multiplier of 1.13833 to the \$11,000 maximum penalty amount in the 2007 policy would have yielded a penalty policy maximum amount of \$12,522, which is *lower* than the current Section 1018 penalty policy maximum amount of \$16,000. EPA believes it would be inappropriate to reduce lead-based paint penalty policy amounts. To avoid a reduction in the lead-based paint penalty policy amounts and arrive at consistent penalty amounts in the two policies, we increased the penalty multiplier for the 2007 penalty policy to 1.52482 (which yields a maximum penalty policy amount equal to the \$16,773 statutory maximum).

**FURTHER INFORMATION CONTACT** section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 2 hours that will prohibit entry 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0335 to read as follows:

**§ 165.T08–0335 Safety Zone; Ohio River Mile 42.5 to Mile 43.0, Chester, WV.**

(a) *Location.* The following area is a safety zone: All waters extending 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Pittsburgh (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in § 165.23, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative at 412–221–0807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 9:30 p.m. to 11:00 p.m. on July 4, 2016.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

**L. McClain, Jr.,**

*Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.*

[FR Doc. 2016–15689 Filed 6–30–16; 8:45 am]

**BILLING CODE 9110–04–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 19**

[FRL–9948–48–OECA]

RIN 2020–AA51

**Civil Monetary Penalty Inflation Adjustment Rule**

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

**ACTION:** Interim final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is promulgating this interim final rule to adjust the level of statutory civil monetary penalty amounts for the statutes that the agency administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 (“the 2015 Act”), which prescribes a formula for 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 interim final rule is effective on August 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Susan O’Keefe, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone number: (202) 564–4021; [okeefe.susan@epa.gov](mailto:okeefe.susan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Since 1990, Federal agencies have been required to issue regulations adjusting for inflation the statutory civil penalties<sup>1</sup> that can be imposed under

<sup>1</sup> 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

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). Over time, the DCIA formula caused statutory civil penalties to lose value relative to total inflation.

The 2015 Act 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. This rule implements the statutorily mandated initial catch-up adjustments. The purpose of the 2015 Act<sup>2</sup> is to provide a mechanism to address these issues by translating originally enacted statutory civil penalty amounts to today's dollars and rounding statutory civil penalties to the nearest dollar. Once Federal agencies issue the 2016 one-time catch-up rule, each statutory civil penalty amount will be adjusted every year to reflect the inflation that has thereafter accrued.

Pursuant to section 5(b)(2)(A) of the 2015 Act, this initial catch-up "cost-of-living adjustment" is, for each statutory civil penalty, the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2015 exceeds the CPI-U for the month of October of the year during which the amount of that civil penalty was established (*i.e.*, originally enacted) or last adjusted by statute or regulation (other than pursuant to the Federal Civil Penalties Inflation Adjustment Act). However, section 5(b)(2)(C) of the 2015 Act provides that the maximum amount of any initial catch-up increase shall not exceed 150 percent of the level that was in effect on November 2, 2015. Table 2

or enforced pursuant to an administrative proceeding or a civil action in the Federal courts."

<sup>2</sup>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.

to 40 CFR 19.4 presents the results of these calculations and adjustments, identifying: (1) The maximum or minimum<sup>3</sup> penalty level established when each statutory section was originally enacted or last adjusted by Congress;<sup>4</sup> and (2) the statutory maximum or minimum civil penalty level, adjusted for inflation under the 2015 Act, that applies to statutory civil penalties assessed on or after August 1, 2016 for violations that occurred after November 2, 2015, the date the 2015 Act was enacted.

The formula<sup>5</sup> for determining the cost-of-living or inflation adjustment to statutory civil penalties consists of the following five-step process:

**Step 1:** Identify the latest year that the penalty level or range was established (*i.e.*, originally enacted) or last adjusted by statute or regulation (other than pursuant to the Federal Civil Penalties Inflation Adjustment Act).

**Step 2:** Calculate the cost-of-living adjustment, which is the percentage for that statutory civil penalty by which the CPI-U for the month of October 2015 exceeds the CPI-U for the month of October of the year identified in Step 1 (hereafter referred to the "cost-of-living multiplier.")<sup>6</sup>

<sup>3</sup>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 civil penalties, with the following exceptions: Section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), refers to a minimum penalty of "not less than \$100,000 . . ."; Section 104B(d)(1) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1414b(d)(1), refers to an exact penalty of \$600 "[f]or each dry ton (or equivalent) of sewage sludge or industrial waste dumped or transported by person 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.

<sup>4</sup>Section 5(b)(2)(B) provides that the cost-of-living-adjustment "shall be applied to the amount of the civil monetary penalty as it was most recently established or adjusted under a provision of law other than under this Act." Because EPA has not adjusted any of the statutory civil penalty levels identified at 40 CFR 19.4 for inflation outside of the inflation adjustments made pursuant to the DCIA, the initial cost-of-living adjustment is calculated based on the statutory civil penalty amount as originally enacted or last adjusted by Congress.

<sup>5</sup>Office of Management and Budget Memorandum, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015* (OMB Memorandum M-16-06) at p. 8, Appendix (February 24, 2016).

<sup>6</sup>See OMB Memorandum M-16-06 at p. 6 for a list of the applicable cost-of-living multipliers by year.

**Step 3:** Multiply the statutory civil penalty level derived from Step 1 by the cost-of-living multiplier calculated in Step 2 and round to the nearest dollar.

**Step 4:** To calculate the 150 percent increase limitation, identify the statutory civil penalty amount in effect on November 2, 2015<sup>7</sup> and multiply by 2.5.<sup>8</sup>

**Step 5:** Compare the statutory civil penalty amounts in Step 3 and Step 4, and take the lesser of the two amounts. The lesser amount is the statutory maximum (or minimum) civil penalty that can be assessed on or after August 1, 2016, for violations that occur after November 2, 2015. Under this rule, these amounts are listed in Table 2 of 40 CFR 19.4.

For example, with this rule, the new statutory maximum total penalty that may be assessed in an administrative penalty enforcement action under Clean Air Act (CAA) section 113(d)(1), 42 U.S.C. 7413(d)(1), and CAA section 205(c)(1), 42 U.S.C. 7524(c)(1), is increasing from \$320,000 to \$356,312.<sup>9</sup> Both of these statutory maximum penalty amounts were established or last adjusted by Congress in 1990, meaning that the applicable cost-of-living multiplier is 1.78156. Multiplying the originally enacted statutory penalty level of \$200,000 by the cost-of-living multiplier of 1.78156 yields a statutory civil penalty level of \$356,312 (*see* Column D). To determine the 150 percent statutory cap, multiply the inflation adjusted statutory civil maximum penalty level of \$320,000, in effect as of November 2, 2015, by 2.5, which equals \$800,000 (*see* Column F). The new statutory civil penalty level is the lesser of the Columns D and F, resulting in an upward adjustment for inflation of \$36,312 (*see* Column H) and the new statutory civil penalty level of \$356,312 (*see* Column G).

<sup>7</sup>78 FR 66643 (November 6, 2013).

<sup>8</sup>To calculate the 150 percent increase limitation, multiply the inflation adjusted statutory civil penalty amounts in effect on November 2, 2015 by 2.5 or 250 percent.

<sup>9</sup>Note that CAA section 113(d)(1) and section 205(c)(1) authorize the imposition of a higher statutory maximum civil penalty in an administrative enforcement action if the EPA Administrator and the Attorney General jointly decide that a higher statutory maximum civil penalty is appropriate in a particular matter.

Citation	Year enacted	Original statutory civil penalty level	Multiplier	Original statutory civil penalty level × multiplier	Statutory civil penalty level as of November 2, 2015	Statutory civil penalty level (as of November 2, 2015) × 2.5	New statutory civil penalty level: The lesser of (D) and (F)	Difference in penalty levels between (G) and (E)
	A	B	C	D	E	F	G	H
CLEAN AIR ACT (CAA), 42 U.S.C. 7413(d)(1), 7524(c)(1) .....	1990	\$200,000	1.78156	\$356,312	\$320,000	\$800,000	\$356,312	\$36,312

The 2015 Act allows agencies to limit the catch-up adjustment to less than the otherwise required amount only under narrowly defined circumstances. To do so, EPA must determine, and the Director of the Office of Management and Budget (OMB) must concur, that “increasing the civil monetary penalty by the otherwise required amount will have a negative economic impact; or the social costs of increasing the civil monetary penalty by the otherwise required amount outweigh the benefits.”<sup>10</sup> In its February 24, 2016 guidance to Federal agencies on the implementation of the 2015 Act, OMB made clear that it expects reductions from the statutorily prescribed catch-up adjustment levels “to be rare.”<sup>11</sup> This rare exception does not apply to the civil penalty provisions covered by this rule.

With this rule, the new statutory maximum (or minimum) penalty levels listed in Table 2 to 40 CFR 19.4 will apply to all statutory civil penalties assessed on or after August 1, 2016, for violations that occurred after November 2, 2015, when the 2015 Act was enacted. The statutory civil penalty levels, as codified at Table 1 to 40 CFR 19.4, will continue to apply to (1) violations that occurred on or before November 2, 2015, and (2) violations that occurred after November 2, 2015, where the penalty assessment was made prior to August 1, 2016.

**II. The 2015 Act Requires Federal Agencies To Issue These Adjustments by Interim Final Rule**

Section 4 of the 2015 Act directs Federal agencies to publish the initial catch-up adjustment through an interim final rule no later than July 1, 2016, which must be effective no later than August 1, 2016. Because the 2015 Act prescribes the formula that Federal agencies must follow to calculate the mandated inflation adjustments, the law does not provide Federal agencies any discretion to vary the amount of the statutory civil penalty changes to reflect

any views or suggestions provided by commenters. Accordingly, pursuant to the 2015 Act and 5 U.S.C. 553(b)(3)(B), EPA finds that there is good cause to promulgate this rule without providing for public comment. It would be impracticable and unnecessary to delay publication of this rule pending opportunity for notice and comment because the 2015 Act does not allow agencies to alter the rule based on public comment.

**III. Statutory and Executive Order Reviews**

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

Under Executive Order 12866, OMB determined this interim final rule to be a “non-significant” regulatory action and, therefore, it did not undergo interagency review.<sup>12</sup>

*B. 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 could 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.

*C. 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 Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the 2015 Act does not allow agencies to alter the rule based on public comment.

*D. 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.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have a substantial direct effect on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. 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.

*G. 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 EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory

<sup>10</sup> Section 4(c)(1) of the 2015 Act.

<sup>11</sup> See OMB Memorandum M–16–06 at p.3.

<sup>12</sup> See OMB Memorandum M–16–06 at pp. 3–4.

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.

*H. 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.

*I. National Technology Transfer and Advancement Act*

The rule does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The primary purpose of this rule is to reconcile 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. Because calculation of the increases is formula-driven, EPA has no discretion in updating the rule to reflect the allowable statutory civil penalties derived from applying the formula. Since there is no discretion under the 2015 Act in determining the statutory civil penalty level, EPA cannot vary the amount of the statutory civil penalty

adjustment to address other issues, including environmental justice issues.

*K. 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 finds that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). This rule is not subject to notice and comment requirements because the 2015 Act does not allow agencies to alter the rule based on public comment.

**List of Subjects in 40 CFR Part 19**

Environmental protection, Administrative practice and procedure, Penalties.

Dated: June 23, 2016.  
Gina McCarthy,  
Administrator.

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

**PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION**

- 1. The authority citation for part 19 is revised 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 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 are assessed before August 1, 2016. The statutory civil penalty levels set forth in the last column of Table 2 to § 19.4 apply to all violations which occur after November 2, 2015, where the penalties are assessed on or after August 1, 2016.

- 3. Amend § 19.4 by:
  - a. Revising the section heading and the introductory text;
  - b. In Table 1, amending the last column heading by removing the text "Penalties effective after December 6, 2013"; and adding "Statutory civil penalties for violations that occurred after December 6, 2013 through November 2, 2015, or are assessed before August 1, 2016" in its place; and
  - c. Adding a new Table 2.

The revisions and addition 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 occurring on or before November 2, 2015, and for violations occurring after November 2, 2015, where penalties are assessed before August 1, 2016. Table 2 sets out the statutory civil penalty provisions of statutes administered by EPA, with the original statutory civil penalty levels, as enacted, with the last column displaying the operative statutory civil penalty levels where penalties are assessed on or after August 1, 2016, for violations that 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 and assessed on or after August 1, 2016
7 U.S.C. 136l(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	\$5,000	\$18,750
7 U.S.C. 136l(a)(2) <sup>1</sup>	FIFRA	1,000/500/1,000	2,750/1,772/2,750

<sup>1</sup> Note that 7 U.S.C. 136l(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).

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 and assessed on or after August 1, 2016
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	25,000	37,500
15 U.S.C. 2647(a)	TSCA	5,000	10,781
15 U.S.C. 2647(g)	TSCA	5,000	8,908
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	5,000	10,781
31 U.S.C. 3802(a)(2)	PFCRA	5,000	10,781
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA)	25,000	51,570
33 U.S.C. 1319(g)(2)(A)	CWA	10,000/25,000	20,628/51,570
33 U.S.C. 1319(g)(2)(B)	CWA	10,000/125,000	20,628/257,848
33 U.S.C. 1321(b)(6)(B)(i)	CWA	10,000/25,000	17,816/44,539
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	10,000/125,000	17,816/222,695
33 U.S.C. 1321(b)(7)(A)	CWA	25,000/1,000	44,539/1,782
33 U.S.C. 1321(b)(7)(B)	CWA	25,000	44,539
33 U.S.C. 1321(b)(7)(C)	CWA	25,000	44,539
33 U.S.C. 1321(b)(7)(D)	CWA	100,000/3,000	178,156/5,345
33 U.S.C. 1414b(d)(1)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	600	1,187
33 U.S.C. 1415(a)	MPRSA	50,000/125,000	187,500/247,336
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
33 U.S.C. 1901 note (see 1409(a)(2)(B))	CACSO	10,000/125,000	13,669/170,861
33 U.S.C. 1901 note (see 1409(b)(1))	CACSO	25,000	34,172
33 U.S.C. 1908(b)(1)	ACT TO PREVENT POLLUTION FROM SHIPS (APPS).	25,000	70,117
33 U.S.C. 1908(b)(2)	APPS	5,000	14,023
42 U.S.C. 300g-3(b)	SAFE DRINKING WATER ACT (SDWA)	25,000	53,907
42 U.S.C. 300g-3(g)(3)(A)	SDWA	25,000	53,907
42 U.S.C. 300g-3(g)(3)(B)	SDWA	5,000/25,000	10,781/37,561
42 U.S.C. 300g-3(g)(3)(C)	SDWA	25,000	37,561
42 U.S.C. 300h-2(b)(1)	SDWA	25,000	53,907
42 U.S.C. 300h-2(c)(1)	SDWA	10,000/125,000	21,563/269,535
42 U.S.C. 300h-2(c)(2)	SDWA	5,000/125,000	10,781/269,535
42 U.S.C. 300h-3(c)	SDWA	5,000/10,000	18,750/40,000
42 U.S.C. 300i(b)	SDWA	15,000	22,537
42 U.S.C. 300i-1(c)	SDWA	100,000/1,000,000	131,185/1,311,850
42 U.S.C. 300j(e)(2)	SDWA	2,500	9,375
42 U.S.C. 300j-4(c)	SDWA	25,000	53,907
42 U.S.C. 300j-6(b)(2)	SDWA	25,000	37,561
42 U.S.C. 300j-23(d)	SDWA	5,000/50,000	9,893/98,935
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992.	10,000	16,773
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972	10,000	35,445
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	25,000	93,750
42 U.S.C. 6928(c)	RCRA	25,000	56,467
42 U.S.C. 6928(g)	RCRA	25,000	70,117
42 U.S.C. 6928(h)(2)	RCRA	25,000	56,467
42 U.S.C. 6934(e)	RCRA	5,000	14,023
42 U.S.C. 6973(b)	RCRA	5,000	14,023
42 U.S.C. 6991e(a)(3)	RCRA	25,000	56,467
42 U.S.C. 6991e(d)(1)	RCRA	10,000	22,587
42 U.S.C. 6991e(d)(2)	RCRA	10,000	22,587
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	25,000	93,750
42 U.S.C. 7413(d)(1)	CAA	25,000/200,000	44,539/356,312
42 U.S.C. 7413(d)(3)	CAA	5,000	8,908
42 U.S.C. 7524(a)	CAA	25,000/2,500	44,539/4,454
42 U.S.C. 7524(c)(1)	CAA	200,000	356,312
42 U.S.C. 7545(d)(1)	CAA	25,000	44,539
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	25,000	53,907
42 U.S.C. 9606(b)(1)	CERCLA	25,000	53,907
42 U.S.C. 9609(a)(1)	CERCLA	25,000	53,907
42 U.S.C. 9609(b)	CERCLA	25,000/75,000	53,907/161,721
42 U.S.C. 9609(c)	CERCLA	25,000/75,000	53,907/161,721
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA).	25,000	53,907

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 and assessed on or after August 1, 2016
42 U.S.C. 11045(b)(1)(A)	EPCRA	25,000	53,907
42 U.S.C. 11045(b)(2)	EPCRA	25,000/75,000	53,907/161,721
42 U.S.C. 11045(b)(3)	EPCRA	25,000/75,000	53,907/161,721
42 U.S.C. 11045(c)(1)	EPCRA	25,000	53,907
42 U.S.C. 11045(c)(2)	EPCRA	10,000	21,563
42 U.S.C. 11045(d)(1)	EPCRA	25,000	53,907
42 U.S.C. 14304(a)(1)	MERCURY—CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	10,000	15,025
42 U.S.C. 14304(g)	BATTERY ACT	10,000	15,025

[FR Doc. 2016-15411 Filed 6-30-16; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Docket No. EPA-R02-OAR-2016-0059;  
FRL-9948-57-Region 2]

### Approval of Air Quality Implementation Plans; New Jersey, Carbon Monoxide Maintenance Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the New Jersey Department of Environmental Protection. This revision establishes an updated ten-year carbon monoxide (CO) limited maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island (NYNNJLI) CO area which includes the following areas: Hudson, Essex, Bergen, and Union Counties, and the municipalities of Clifton, Passaic and Paterson in Passaic County. New Jersey qualifies for a limited maintenance plan, rather than a full maintenance plan, because monitoring concentrations of CO are less than 85% of the standard. In a limited maintenance plan, future-year projection inventories and transportation conformity budgets are not required. In addition, EPA is also approving the 2007 Attainment/Base Year CO emissions inventory and the shutdown of 5 CO maintenance monitors in New Jersey.

The New Jersey portion of the NYNNJLI CO area was redesignated to attainment of the CO National Ambient Air Quality Standard (NAAQS) on

August 23, 2002 and a maintenance plan was also approved at that time. By this action, EPA is approving a second limited maintenance plan for this area because it provides for continued attainment of the CO NAAQS for an additional ten years. The intended effect of this rulemaking is to approve a SIP revision that will insure continued maintenance of the CO NAAQS.

**DATES:** This final rule is effective on August 1, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2016-0059. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI 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 electronically through <http://www.regulations.gov>.

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**SUPPLEMENTARY INFORMATION:** The supplementary information section is arranged as follows:

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#### I. What action is EPA taking?

EPA is approving New Jersey's SIP revision updating their existing ten-year carbon monoxide (CO) maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island (NYNNJLI) CO area, which includes the following areas: Hudson, Essex, Bergen, and Union Counties, and the municipalities of Clifton, Passaic and Paterson in Passaic County, with another ten-year plan. The reader is referred to the March 25, 2016 (81 FR 16102) proposal for details on this rulemaking.

#### II. What comments did EPA receive on its proposal and what are EPA's responses?

EPA did not receive any comments on our proposed approval of the updated CO limited maintenance plan. EPA is approving the New Jersey SIP revision request.

#### III. What is the adequacy status of the CO limited maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island area?

Section 118(e) of the transportation conformity rule (40 CFR part 93) states that a conformity determination cannot be made using submitted motor vehicle emission budgets ("budgets") until EPA makes a positive determination that the submitted budgets are adequate. In accordance with our rule, the limited maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island (NYNNJLI) CO area was posted for adequacy review on July 27, 2015 on EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>.

As a general rule, however, limited maintenance plans, such as the maintenance plan for the NYNNJLI CO area, do not include budgets. Instead, for those areas that qualify under our