



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

JAN 13 2017

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Transmittal of the 2017 Annual Civil Monetary Penalty Inflation Adjustment Rule

**FROM:** Susan Shinkman, Director  
Office of Civil Enforcement

**TO:** Regional Counsel  
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, Office of Enforcement and Compliance Assurance, Region V  
Director, Compliance Assurance and Enforcement Division, Region VI  
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  
OECA Office Directors  
OECA Division Directors  
Regional Media and Superfund Division Directors  
Regional Enforcement Coordinators

Attached is the 2017 Civil Monetary Penalty Inflation Adjustment Rule (2017 Rule), which was published yesterday and is effective on January 15, 2017.<sup>1</sup> The 2017 Rule is mandated by the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act (2015 Act),<sup>2</sup> which required that each agency issue a one-time catch-up penalty inflation rule by July 1, 2016.<sup>3</sup> In addition, beginning in 2017, the 2015 Act requires that each federal agency publish its annual penalty inflation adjustment rule no later than January 15 each year. EPA promulgated the 2017 Rule to implement the latter requirement. When determining the applicable statutory maximum penalty amounts, case teams should refer to the rule issued today, which superseded the 2016 rule. The attached 2017 Rule provides the applicable statutory civil penalty amounts in amended

<sup>1</sup> 82 Fed. Reg. 3633 (January 12, 2017).

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

<sup>3</sup> EPA promulgated its catch-up rule at 81 Fed. Reg. 43,091 (July 1, 2016).

Table 2 of 40 C.F.R. § 19.4.

As you may recall, by memorandum dated July 27, 2016, Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance, issued [Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation](#) (Guidance). The Guidance establishes a process for calculating penalty amounts using EPA's penalty policies, and it remains in effect. Table A to the 2016 Guidance delineates the appropriate inflation multipliers that should be applied to unadjusted gravity-based penalties calculated under each of EPA's civil penalty *policies*. By contrast, the 2017 Rule adjusts the *statutory* maximum and, in a few instances, minimum penalty level that can be assessed. Rather than revising the Guidance now to account for the small amount of inflation that accrued since the 2016 Rule, OECA decided to defer modifying the inflation multipliers listed in Table A of the Guidance until January 2018.<sup>4</sup> Accordingly, the inflation multipliers contained in the Guidance continue to remain in effect until superseded (which we anticipate will occur on January 15, 2018).

As noted in the Guidance, in cases where the violations occurred entirely *on or before* November 2, 2015, which is the date of enactment of the 2015 Act, enforcement practitioners should use the inflation adjustment policy and multipliers contained in the 2013 memorandum [Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation](#) dated December 6, 2013.

## **I. Statutory Administrative Penalty Caps**

Pursuant to the 2017 Rule, the newly adjusted statutory maximum and, in some cases, minimum penalty levels apply to penalties *assessed on or after January 15, 2017, for violations that occurred after November 2, 2015*. Consequently, effective January 15, 2017, where 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 2017 Rule apply if *some or all* of the violations occurred after November 2, 2015; and
- The lower administrative penalty caps in Table 1 of § 19.4 apply if *all* of the violations occurred on or before November 2, 2015.

## **II. Statutory Minimum or Exact Penalty Amounts**

With the following two operative<sup>5</sup> exceptions, all statutes administered by EPA provide for statutory maximum penalty levels:

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<sup>4</sup> See Guidance at page 2.

<sup>5</sup> Section 104B(d)(1) of the Marine Protection, Research, and Sanctuaries Act (MPRSA), 33 U.S.C. § 1414b(d)(1), refers to an exact penalty of \$600 that must be assessed “[f]or each dry ton (or equivalent) of sewage sludge or

1. Section 311(b)(7)(D) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(7)(D), refers to a minimum penalty of “not less than \$100,000,” which under the 2017 Rule has been adjusted from \$178,156 to \$181,071. Thus, penalties assessed under CWA § 311(b)(7)(D) on or after January 15, 2017, for violations that occurred after November 2, 2015, must be a minimum of \$181,071; and
2. Section 325(d)(1) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(d)(1), requires the assessment of an exact civil penalty of \$25,000 for each frivolous trade secret claim. The originally enacted exact penalty of \$25,000 was adjusted to \$53,907 under the 2016 Rule and \$54,789 under the 2017 Rule. Accordingly, any penalty assessed under EPCRA § 325(d)(1) on or after January 15, 2017, for violations related to frivolous trade secret claims that occurred after November 2, 2015, must be the exact amount of \$54,789.

### **III. Further Information**

Any questions concerning the 2017 Rule or this memorandum can be directed to David Smith-Watts of the Office of Civil Enforcement at (202) 564-4083 or by email at [smith-watts.david@epa.gov](mailto:smith-watts.david@epa.gov).

cc: Regional Administrators  
Deputy Regional Administrators  
Cynthia Giles, Assistant Administrator, OECA  
Shari Wilson, Deputy Assistant Administrator, OECA  
Lawrence Starfield, Principal Deputy Assistant Administrator, OECA  
All OCE and OSRE Employees  
Tom Mariani, Chief, EES, DOJ  
Deputy and Assistant Chiefs, EES, DOJ  
Kathie Stein, Environmental Appeals Judge  
Susan Biro, Chief Administrative Law Judge  
Regional Judicial Officers  
Caroline Emmerson, OAP, OECA  
Keith Bartlett, OAP, OECA

Attachment: 2017 Rule promulgated in *Federal Register* on January 12, 2017

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industrial waste dumped or transported by the person in violation of this subsection in calendar year 1992...”. This provision is no longer operative in that any violations subject to this penalty provision would have had to occurred in 1992.

accordance with this subpart. For the purposes of this subpart, the terms—

(1) “Family” means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) “Barter” means the exchange of handicrafts or fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) “Customary trade” means the exchange of handicrafts or furs for cash to support personal or family needs; and does not include trade which constitutes a significant commercial enterprise.

■ 4. Amend § 13.480 by:

■ a. Designating the undesignated paragraph as paragraph (a).

■ b. Adding paragraph (b).

The addition reads as follows:

**§ 13.480 Subsistence hunting and trapping.**

\* \* \* \* \*

(b)(1) The following types of bait may be used to take bears for subsistence uses:

(i) Parts of legally taken native fish or wildlife that are not required to be salvaged; or

(ii) Remains of native fish or wildlife that died of natural causes.

(2) The use of any other type of bait to take bears for subsistence uses is prohibited except under the terms and conditions of a permit issued under paragraph (d) of § 13.1902.

■ 5. Add § 13.482 to read as follows:

**§ 13.482 Subsistence collection and use of animal parts.**

(a) Local rural residents may collect animal parts (excluding parts of threatened or endangered species) for subsistence uses in park areas where subsistence uses are authorized, provided that:

(1) The resident’s primary permanent residence is in an area or community with a federally recognized customary and traditional use determination for the species in the game management unit where the collecting occurs (50 CFR part 100); and

(2) The resident has written authorization from the superintendent issued under § 1.6 of this chapter that identifies specific areas where this activity is allowed.

(3)(i) If you are a NPS-qualified subsistence user (recipient), you may designate another NPS-qualified subsistence user to collect animal parts

on your behalf in accordance with this section for the following purposes:

(A) Making handicrafts for personal use, customary trade, or barter; or

(B) Making handicrafts for qualified educational or cultural programs.

(ii) The designated collector must obtain a permit from the superintendent. The designated collector may not charge the recipient for his/her services or for the collected items.

(4) The use of paid employees to collect animal parts is prohibited. This prohibition does not apply to qualified educational or cultural programs that collect animal parts to create handicrafts, provided that the resulting handicrafts are not exchanged through barter or customary trade.

(b) The superintendent may establish conditions, limits, and other restrictions on collection activities. Areas open to collections will be identified on a map posted on the park Web site and available at the park visitor center or park headquarters. Violating a condition, limit, or restriction is prohibited.

■ 6. Amend § 13.485 by:

■ a. Revising paragraph (b);

■ b. Redesignating paragraph (c) as paragraph (f); and

■ c. Adding paragraphs (c), (d), and (e).

The revision and additions read as follows:

**§ 13.485 Subsistence use of timber and plant material.**

\* \* \* \* \*

(b) The gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the gathering of dead or downed timber for firewood for noncommercial subsistence uses, shall be allowed without a permit in park areas where subsistence uses are allowed.

(c) The gathering by local rural residents of plant materials to make handicrafts for customary trade or barter is authorized in park areas where subsistence uses are allowed in accordance with terms and conditions established by the superintendent and posted on the park Web site. The use of paid employees to collect plant materials is prohibited. This prohibition does not apply to qualified educational or cultural programs that collect plant materials to create handicrafts, provided that the resulting handicrafts are not exchanged through barter or customary trade.

(d)(1) If you are a NPS-qualified subsistence (recipient), you may designate another NPS-qualified subsistence user to collect plants on

your behalf in accordance with this section for the following purposes:

(i) Making handicrafts for personal use, customary trade, or barter; or

(ii) Making handicrafts for qualified educational or cultural programs.

(2) The designated collector must obtain a permit from the superintendent. The designated collector may not charge the recipient for his/her services or for the collected items.

(e) The superintendent may establish conditions, limits, and other restrictions on gathering activities. Violating a condition, limit, or restriction is prohibited.

\* \* \* \* \*

■ 7. Amend § 13.1902 by adding paragraph (d) to read as follows:

**§ 13.1902 Subsistence.**

\* \* \* \* \*

(d) *Use of bait for taking bears.* (1) The superintendent may issue individual, annual permits allowing the use of human-produced food items as bait for taking bears upon a finding that:

(i) Such use is compatible with the purposes and values for which the area was established (*e.g.* does not create a user conflict); and

(ii) The permit applicant does not have reasonable access to natural bait that may be used under § 13.480(b)(1).

(2) Permits will identify specific locations within the park area where the bait station may be established and will not include areas where the use of such materials could create a user conflict.

Dated: December 29, 2016.

**Michael Bean,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2016–32045 Filed 1–11–17; 8:45 am]

**BILLING CODE 4312–52–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 19**

[FRL–9958–06–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, 2017.

**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 penalties<sup>1</sup> that can be imposed under 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 Act<sup>2</sup> requires agencies to:

<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 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.

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). This rule implements the annual penalty inflation adjustments mandated by the 2015 Act. Beginning in 2017, 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 2016 exceeds the CPI-U for the month of October 2015.

With this rule, the new statutory maximum (or minimum<sup>3</sup>) penalty levels listed in Table 2 to 40 CFR 19.4 will apply to all statutory civil penalties assessed on or after January 15, 2017, 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.

The formula for determining the cost-of-living or inflation adjustment to

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

<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 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 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.

statutory civil penalties consists of the following steps:

*Step 1:* The cost-of-living adjustment multiplier for 2017, based on the CPI-U of October 2016, is 1.01636.<sup>4</sup> Multiply 1.01636 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 annual adjustments no later than January 15, 2017. 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 the annual inflation adjustments “notwithstanding section 553” of the APA. According to OMB guidance issued to Federal agencies on the implementation of the 2017 annual adjustment,<sup>5</sup> 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**

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

Under Executive Order 12866, OMB determined this final rule to be a “non-significant” regulatory action and, therefore, it did not undergo interagency review.<sup>6</sup>

<sup>4</sup> Office of Management and Budget Memorandum, *Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum M-17-11) at p. 1 (December 16, 2016).

<sup>5</sup> See OMB Memorandum M-17-11 at p. 3.

<sup>6</sup> See OMB Memorandum M-17-11 at p. 3.

*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 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.

*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 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*

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.

*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)). 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,<sup>7</sup> 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, 2017.

**Gina McCarthy,**  
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 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 fourth 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 and before January 15, 2017. 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 January 15, 2017.

■ 3. Amend § 19.4 by revising 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 occurring on or before

<sup>7</sup> See OMB Memorandum M–17–11 at p. 3.



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 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 are assessed on or after August 1, 2016 but before January 15, 2017, for violations that occurred after November 2, 2015; the

last column displays the operative statutory civil penalty levels where penalties are assessed on or after January 15, 2017, 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 but before January 15, 2017	Statutory civil penalties for violations that occurred after November 2, 2015 and assessed on or after January 15, 2017
7 U.S.C. 136l(a)(1)	Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).	\$5,000	\$18,750	\$19,057
7 U.S.C. 136l(a)(2) <sup>1</sup>	FIFRA	\$1,000/\$500/\$1,000	\$2,750/\$1,772/\$2,750	\$2,795/\$1,801/\$2,795
15 U.S.C. 2615(a)(1)	Toxic Substances Control Act (TSCA)	\$25,000	\$37,500	\$38,114
15 U.S.C. 2647(a)	TSCA	\$5,000	\$10,781	\$10,957
15 U.S.C. 2647(g)	TSCA	\$5,000	\$8,908	\$9,054
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act (PFCRA).	\$5,000	\$10,781	\$10,957
31 U.S.C. 3802(a)(2)	PFCRA	\$5,000	\$10,781	\$10,957
33 U.S.C. 1319(d)	Clean Water Act (CWA)	\$25,000	\$51,570	\$52,414
33 U.S.C. 1319(g)(2)(A)	CWA	\$10,000/\$25,000	\$20,628/\$51,570	\$20,965/\$52,414
33 U.S.C. 1319(g)(2)(B)	CWA	\$10,000/\$125,000	\$20,628/\$257,848	\$20,965/\$262,066
33 U.S.C. 1321(b)(6)(B)(i)	CWA	\$10,000/\$25,000	\$17,816/\$44,539	\$18,107/\$45,268
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	\$10,000/\$125,000	\$17,816/\$222,695	\$18,107/\$226,338
33 U.S.C. 1321(b)(7)(A)	CWA	\$25,000/\$1,000	\$44,539/\$1,782	\$45,268/\$1,811
33 U.S.C. 1321(b)(7)(B)	CWA	\$25,000	\$44,539	\$45,268
33 U.S.C. 1321(b)(7)(C)	CWA	\$25,000	\$44,539	\$45,268
33 U.S.C. 1321(b)(7)(D)	CWA	\$100,000/\$3,000	\$178,156/\$5,345	\$181,071/\$5,432
33 U.S.C. 1414b(d)(1)	Marine Protection, Research, and Sanctuaries Act (MPRSA).	\$600	\$1,187	\$1,206
33 U.S.C. 1415(a)	MPRSA	\$50,000/\$125,000	\$187,500/\$247,336	\$190,568/\$251,382
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
33 U.S.C. 1901 note (see 1409(a)(2)(B))	CACSO	\$10,000/\$125,000	\$13,669/\$170,861	\$13,893/\$173,656
33 U.S.C. 1901 note (see 1409(b)(1))	CACSO	\$25,000	\$34,172	\$34,731
33 U.S.C. 1908(b)(1)	Act To Prevent Pollution From Ships (APPS).	\$25,000	\$70,117	\$71,264
33 U.S.C. 1908(b)(2)	APPS	\$5,000	\$14,023	\$14,252
42 U.S.C. 300g-3(b)	Safe Drinking Water Act (SDWA)	\$25,000	\$53,907	\$54,789
42 U.S.C. 300g-3(g)(3)(A)	SDWA	\$25,000	\$53,907	\$54,789
42 U.S.C. 300g-3(g)(3)(B)	SDWA	\$5,000/\$25,000	\$10,781/\$37,561	\$10,957/\$38,175
42 U.S.C. 300g-3(g)(3)(C)	SDWA	\$25,000	\$53,907	\$54,789
42 U.S.C. 300h-2(b)(1)	SDWA	\$25,000	\$53,907	\$54,789
42 U.S.C. 300h-2(c)(1)	SDWA	\$10,000/\$125,000	\$21,563/\$269,535	\$21,916/\$273,945
42 U.S.C. 300h-2(c)(2)	SDWA	\$5,000/\$125,000	\$10,781/\$269,535	\$10,957/\$273,945
42 U.S.C. 300h-3(c)	SDWA	\$5,000/\$10,000	\$18,750/\$40,000	\$19,057/\$40,654
42 U.S.C. 300i(b)	SDWA	\$15,000	\$22,537	\$22,906
42 U.S.C. 300i-1(c)	SDWA	\$100,000/\$1,000,000	\$131,185/\$1,311,850	\$133,331/\$1,333,312
42 U.S.C. 300j(e)(2)	SDWA	\$2,500	\$9,375	\$9,528
42 U.S.C. 300j-4(c)	SDWA	\$25,000	\$53,907	\$54,789
42 U.S.C. 300j-6(b)(2)	SDWA	\$25,000	\$37,561	\$38,175
42 U.S.C. 300j-23(d)	SDWA	\$5,000/\$50,000	\$9,893/\$98,935	\$10,055/\$100,554
42 U.S.C. 4852d(b)(5)	Residential Lead-Based Paint Hazard Reduction Act of 1992.	\$10,000	\$16,773	\$17,047
42 U.S.C. 4910(a)(2)	Noise Control Act of 1972	\$10,000	\$35,445	\$36,025
42 U.S.C. 6928(a)(3)	Resource Conservation and Recovery Act (RCRA).	\$25,000	\$93,750	\$95,284
42 U.S.C. 6928(c)	RCRA	\$25,000	\$56,467	\$57,391
42 U.S.C. 6928(g)	RCRA	\$25,000	\$70,117	\$71,264
42 U.S.C. 6928(h)(2)	RCRA	\$25,000	\$56,467	\$57,391
42 U.S.C. 6934(e)	RCRA	\$5,000	\$14,023	\$14,252
42 U.S.C. 6973(b)	RCRA	\$5,000	\$14,023	\$14,252
42 U.S.C. 6991e(a)(3)	RCRA	\$25,000	\$56,467	\$57,391
42 U.S.C. 6991e(d)(1)	RCRA	\$10,000	\$22,587	\$22,957
42 U.S.C. 6991e(d)(2)	RCRA	\$10,000	\$22,587	\$22,957
42 U.S.C. 7413(b)	Clean Air Act (CAA)	\$25,000	\$93,750	\$95,284
42 U.S.C. 7413(d)(1)	CAA	\$25,000/\$200,000	\$44,539/\$356,312	\$45,268/\$362,141
42 U.S.C. 7413(d)(3)	CAA	\$5,000	\$8,908	\$9,054
42 U.S.C. 7524(a)	CAA	\$25,000/\$2,500	\$44,539/\$4,454	\$45,268/\$4,527
42 U.S.C. 7524(c)(1)	CAA	\$200,000	\$356,312	\$362,141
42 U.S.C. 7545(d)(1)	CAA	\$25,000	\$44,539	\$45,268
42 U.S.C. 9604(e)(5)(B)	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).	\$25,000	\$53,907	\$54,789
42 U.S.C. 9606(b)(1)	CERCLA	\$25,000	\$53,907	\$54,789
42 U.S.C. 9609(a)(1)	CERCLA	\$25,000	\$53,907	\$54,789

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 and assessed on or after August 1, 2016 but before January 15, 2017	Statutory civil penalties for violations that occurred after November 2, 2015 and assessed on or after January 15, 2017
42 U.S.C. 9609(b)	CERCLA	\$25,000/\$75,000	\$53,907/\$161,721	\$54,789/\$164,367
42 U.S.C. 9609(c)	CERCLA	\$25,000/\$75,000	\$53,907/\$161,721	\$54,789/\$164,367
42 U.S.C. 11045(a)	Emergency Planning and Community Right-To-Know Act (EPCRA).	\$25,000	\$53,907	\$54,789
42 U.S.C. 11045(b)(1)(A)	EPCRA	\$25,000	\$53,907	\$54,789
42 U.S.C. 11045(b)(2)	EPCRA	\$25,000/\$75,000	\$53,907/\$161,721	\$54,789/\$164,367
42 U.S.C. 11045(b)(3)	EPCRA	\$25,000/\$75,000	\$53,907/\$161,721	\$54,789/\$164,367
42 U.S.C. 11045(c)(1)	EPCRA	\$25,000	\$53,907	\$54,789
42 U.S.C. 11045(c)(2)	EPCRA	\$10,000	\$21,563	\$21,916
42 U.S.C. 11045(d)(1)	EPCRA	\$25,000	\$53,907	\$54,789
42 U.S.C. 14304(a)(1)	Mercury-Containing and Rechargeable Battery Management Act (Battery Act).	\$10,000	\$15,025	\$15,271
42 U.S.C. 14304(g)	Battery Act	\$10,000	\$15,025	\$15,271

<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).

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R04–OAR–2014–0431; FRL–9957–93–Region 4]

**Approval and Promulgation of Implementation Plans; Alabama; Infrastructure Requirements or the 2010 Sulfur Dioxide National Ambient Air Quality Standard**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve in part and disapprove in part portions of the April 23, 2013, State Implementation Plan (SIP) submission, submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), for inclusion into the Alabama SIP. This final action pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure SIP submission.” ADEM certified that the Alabama SIP contains provisions that ensure the 2010 1-hour SO<sub>2</sub> NAAQS is implemented, enforced, and maintained in Alabama. EPA has determined that portions of Alabama’s

infrastructure SIP submission, provided to EPA on April 23, 2013, satisfy certain required infrastructure elements for the 2010 1-hour SO<sub>2</sub> NAAQS.

**DATES:** This rule will be effective February 13, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2014–0431. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not 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](http://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:** Michele Notarianni, 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.

Notarianni can be reached via electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov) or via telephone at (404) 562–9031.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Overview**

On June 2, 2010 (75 FR 35520, June 22, 2010), EPA revised the primary SO<sub>2</sub> NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour SO<sub>2</sub> NAAQS to EPA no later than June 2, 2013.

EPA is taking final action to approve Alabama’s April 23, 2013, submission that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 1-hour SO<sub>2</sub> NAAQS, with the exception of interstate transport provisions pertaining to visibility protection requirements of section 110(a)(2)(D)(i)(II) (prong 4) and the state board requirements of section 110(a)(2)(E)(ii). With respect to the visibility protection requirements of section 110(a)(2)(D)(i)(II) (prong 4), EPA is not finalizing any action at this time regarding this requirement. With respect to Alabama’s infrastructure SIP submission related to section 110(a)(2)(E)(ii) requirements respecting