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

OCT 21 1997

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: FIFRA Worker Protection Standard - Enforcement Interim Final

FROM: Jesse Baskerville, Director
Toxics and Pesticides Enforcement Division
Office of Regulatory Enforcement

TO: Addressees (See below)

I am pleased to announce the completion of the **Interim Final Penalty Policy for the FIFRA Worker Protection Standard (WPS)**. This document has been a work in progress since I distributed the DRAFT WPS Enforcement Response Policy for comments on December 31, 1996. Your responses and comments received were comprehensive in scope, and I wish to thank everyone who took the time to work with the TPED WPS team throughout this year with the development of this document. Since TPED first released this draft document in 1996, we have had the experience of several actions by the regions, responding to regions, states and industry compliance and enforcement, visiting regions and other sites to discuss WPS and enforcement, and litigating the DuPont WPS misbranding case before ALJ Kuhlman.

The first noticeable difference you will find with the INTERIM FINAL is that its name has been changed. Since this document is intended to be an appendix to the 1990 FIFRA ENFORCEMENT RESPONSE POLICY (ERP), we felt that the title of this document should not be in conflict or create confusion with the FIFRA ERP. Also, since this document has not yet undergone a full "road" test with the States and Regions, we are intending the document to be in interim state for approximately one year from the date of this memorandum.

During this interim stage, I am requesting that you provide TPED with your comments, issues, problems, or concerns regarding the substance of application of the WPS Penalty Policy. In addition, as you go through the year, we also ask that you provide TPED with examples of real-life scenarios and experiences that can be shared with other Regions and offices. One year from now, TPED will review all the information that has been collected and will reevaluate the interim policy. TPED will work to improve and enhance this document and reissue it as a FINAL penalty policy. It is my goal to make this document one of the best enforcement tools a case development officer/attorney team can have.

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Please distribute this document to your staff, colleagues, and State pesticide enforcement programs as soon as possible. An electronic file version of the WPS PENALTY CALCULATION WORKSHEET is available. Please send your requests to Yvette P. Hellyer, of my staff. If you have questions, comments or are in need of further assistance, please contact Yvette P. Hellyer at 202/564-4033 or Jerry Stubbs at 202/564-4178. Ms. Hellyer can also be reached by her Internet address, hellyer.yvette@epamail.epa.gov, Monday through Friday from 7:30 a.m. to 4:30 p.m., EST. We look forward to hearing from you.

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cc: Regional WPS Coordinator
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INTERIM Final
(September 1997)

WORKER PROTECTION STANDARD PENALTY POLICY

AN APPENDIX TO THE ENFORCEMENT RESPONSE POLICY FOR THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT

Introduction

The FIFRA Worker Protection Standard (WPS), 40 CFR Part 156 Subpart K and Part 170, was published in 1992 and amended at 60 FR 21953, May 3, 1995, and 61 FR 33213, June 21, 1996. General guidance concerning enforcement of the FIFRA WPS is provided in the FIFRA Enforcement Response Policy (hereinafter FIFRA ERP), published July 2, 1990. In the *Overview of the Policy*, FIFRA ERP pg. 2, guidance on the appropriate enforcement response for violations of specific FIFRA programs such as, the FIFRA GOOD LABORATORY PRACTICE STANDARD, FIFRA § 19-RECALL REQUESTS, or FIFRA § 7(c) PESTICIDE PRODUCING ESTABLISHMENT REPORTING REQUIREMENTS, should be attached as additional appendices and used in conjunction with the overall FIFRA ERP. Consistent with the FIFRA ERP, EPA provides additional guidance on appropriate response to specific FIFRA WPS violations. This FIFRA WPS PENALTY POLICY (hereinafter WPS Penalty Policy or Policy) should be used in conjunction with the current FIFRA ERP.

Assessing the FIFRA WPS Enforcement Actions For Misbranding and Misuse Violations

Determining the Appropriate Recipient or Respondent. Case Development Officers should refer to document entitled GUIDANCE ON ISSUANCE OF WORKER PROTECTION STANDARD ENFORCEMENT ACTIONS IN RESPONSE TO PERSONAL PROTECTIVE EQUIPMENT VIOLATION, 60 FR 18100 (April 10, 1995) for criteria to consider when determining who the responsible parties are for violations of WPS requirements (Attachment 1). The Guidance identifies ten factors EPA recommends Federal and State officers consider when determining the approriate party(ies) for a WPS enforcement action. A copy of the guidance should be kept with this WPS Penalty Policy. Periodic updates of the guidance may occur as changes in the industry and regulatory standard occur.

Levels of Enforcement Response Action

Enforcement of the WPS is governed by the FIFRA ERP, including this WPS Penalty Policy which addresses two primary WPS violation categories (but is not limited to): **§12(a)(1)(E) misbranding violations and §12(a)(2)(G) pesticide use violations**. This WPS Penalty Policy only addresses misbranding and misuse violations (see Attachment 2-A and Attachment 2-B) pursuant to 40 CFR §§ 156 (Subpart K) and 170. For other WPS violation

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categories, such as §§ 12(a)(1)(B), 12(a)(2)(H), and 12(a)(2)(M), see the appropriate sections as addressed in the FIFRA ERP.

The FIFRA ERP directs that once documentation of a FIFRA violation is complete, appropriate action for the violation must be selected. Enforcement response levels include:

- Notice of Warning -- FIFRA §§9(c)(3), 14(a)(2) and 14(a)(4)
- Stop Sale, Use or Removal Order -- FIFRA §13(a)
- Seizure -- FIFRA §13(b)
- Injunction -- FIFRA §16(c)
- Civil Administrative Penalty -- FIFRA §14(a)
- Criminal referral, FIFRA §14(b)
- Formal and Informal Recalls, FIFRA §19.

Each enforcement response action level above is discussed in greater detail in the FIFRA ERP. Be sure to consult with the FIFRA ERP when completing the case development. Each of the misbranding and misuse violations for WPS are discussed in detailed in "FIFRA WPS charge and gravity level matrix," Attachment 2-A and Attachment 2-B, respectively. Special attention is provided below in this Policy concerning Notices of Warning and the Civil Administrative Complaints.

Notice of Warning (NOW). FIFRA §§ 9(c)(3), 14(a)(2), and 14(a)(4) provide EPA with the authority to respond to certain violations of FIFRA with a NOW (see also, NOTICE OF WARNING, FIFRA ERP at pg. 4).

FIFRA § 9(c)(3). A NOW may be issued in lieu of a civil complaint as an appropriate enforcement response for minor violations. A minor violation generally consist of a combination of factors such as, low pesticide toxicity, lack of potential or actual harm or exposure to humans or the environment, absence of a prior FIFRA violation history and lack of culpability. A NOW may be issued to any registrant, commercial applicator, wholesaler or other distributor, as defined in FIFRA § 14(a)(1) (also known as a 14(a)(1) violator category). If the violation is determined "minor" with a gravity adjustment value of 3 or below, as defined by the FIFRA ERP (pg. 5) and TABLE 3: GRAVITY ADJUSTMENT CRITERIA (pg. 22 or C-1), a 14(a)(1) violator who violates any provision of FIFRA may receive a NOW. As always, the Case Development Officer and Attorney team must document the mitigating factors of the case that support this enforcement response.

FIFRA § 14(a)(2). FIFRA provides that a private applicator or other person that is <u>not</u> a registrant, commercial applicator, wholesaler or other distributor (also known as a 14(a)(2) violator category) <u>shall</u> receive a NOW for a first-time offense. However, this limitation does not apply to "for hire" applicators that hold or apply registered general-use pesticides or use dilutions of registered pesticides, and who provides a service (such as vector control) without delivering any unapplied pesticide to any

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person so served. Such a "for hire" applicator who violates any provision of FIFRA before January 30, 1997, may be assessed a civil penalty of not more than $500 or $550 for any violation on or after January 30, 1997, for a first offense[1].

FIFRA § 14(a)(4). In all circumstances, EPA may issue a NOW in lieu of a civil penalty if EPA determines that the pesticide-use violation occurred despite the exercise of due care and the violation did not cause significant harm to health or the environment. The Case Development Officer and Attorney team must document the facts of the case that support this enforcement response.

Civil Administrative Penalties[1]. Misbranding violations, with few exceptions, are subject to stop sale orders and civil administrative complaints, since the persons involved in the registration, production, sale and distribution of WPS-type pesticide products are covered under FIFRA § 14(a)(1). Persons covered under FIFRA §§ 14(a)(1) or 14(a)(2) who are involved in misuse violations, subject to the limitations above, may also be subject to civil administrative complaints.

FIFRA § 14(a)(1). On or after January 30, 1997, a registrant, commercial applicator, wholesaler, dealer or distributor may be assessed a civil penalty up to $5,500 for each FIFRA violation. Before January 30, 1997, the civil penalty may be assessed up to $5,000.

FIFRA §14(a)(2). On or after January 30, 1997, a private applicator or other person (those not identified under FIFRA § 14(a)(1)), may be assessed a civil penalty up to $1,100 for each FIFRA violation, except that a penalty up to $550 for violations on or after January 30, 1997, may be assessed for a "for hire" applicator, after receiving a Notice of Warning or citation for a prior FIFRA violation. (Also review the FIFRA ERP pgs. 9, 10, 17) for further clarification of "for hire" and private applicators.) The prior violation may have been for the same or different FIFRA violation. Before January 30, 1997, the civil penalty may be assessed up to $1,000 (for a private applicator) or $500 (for a for-hire applicator).

The following examples demonstrate when a civil administrative complaint proposing civil penalties is usually appropriate:

- Where a violation presents actual or potential risk of harm to human health or the environment; or
- Where the violation impedes EPA's ability to fulfill FIFRA goals or harms the regulatory program; or
- Where the violation resulted from ordinary negligence, inadvertence or mistake.

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1 Penalty assessments must take into consideration the CIVIL MONETARY PENALTY INFLATION ADJUSTMENT RULE, published on December 31, 1996 (61 FR 69361) and effective on January 30, 1997 (see Attachment 3 of the WPS Penalty Policy).

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Determining the Appropriate Enforcement Response

In conclusion, the following chart summaries when issuance of a NOW or a Civil Administrative Complaint is the appropriate enforcement response:

PERSON	FIRST VIOLATION	SECOND VIOLATION WITHIN FIVE (5) YEARS
Registrant OR Commercial applicator[2] OR Wholesaler OR Dealer OR Retailer OR Distributor[1]	If gravity adjustment factor is 3 or below (minor violations)-->NOW under § 9(c)(3) If gravity adjustment factor is 4 or greater--> Civil Administrative Complaint for a §14(a)(1) violator category with a penalty amount up to $5,000/violation if committed prior to 1/30/97, or up to $5,500/ violation if committed on or after 1/30/97[3]	Civil Administrative Complaint for a §14(a)(1) violator category with a penalty amount up to $5,000/violation if committed prior to 1/30/97 or up to $5,500/violation if committed on or after 1/30/97[2]
Private applicator[1]	NOW for a § 14(a)(2) violator category	Civil Administrative Complaint for a §14(a)(2) violator category with a penalty amount up to $1,000/violation if committed prior to 1/30/97 or up to $1,100/violation if committed on or after 1/30/97[2,4]
"For hire" applicator	Civil Administrative Complaint for a § 14(a)(2) violator category with a penalty amount up to $500/violation if committed prior to 1/30/97, or $550/ violation if committed on or after 1/30/97[1]	Civil Administrative Complaint for a §14(a)(2) violator category for a penalty amount up to $1,000/violation if committed prior to 1/30/97, or $1,100/violation if committed on or after 1/30/97[2,3].

2 Also see FIFRA ERP ASSESSING ADMINISTRATIVE CIVIL PENALTIES (pg. 17) and footnotes (pg. 10), regarding further discussions on distributors, and commercial, "for-hire" and private applicators.

3 Even if the Total gravity adjustment level is 4 or greater, and if the violation occurs despite the "exercise of due care," and no "significant harm" occurs, a NOW under §14(a)(4) may be issued at any time.

4 Prior written warning or citation will be considered for any FIFRA violation.

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Calculating the Penalty --- Step-by-Step

The following procedures are designed for use with the PENALTY CALCULATION SHEET which is the last page of this document.

MISBRANDING. As stated in the FIFRA ERP, once it is determined that a civil administrative penalty is appropriate, a separate civil penalty, up to the statutory maximum, shall be assessed for each independent violation of FIFRA (pg. 25). A violation is independent if it results from an act or failure to act which is not the result of any other act for which a civil penalty is to be assessed, or if the elements of proof for the violations are different. Dependent violations may be listed in the complaint, but will not result in separate civil penalty assessments.

An example of a dependent violation is multiple misbranding violations that occur on a single product label. If a single product label is misbranded in one way or ten ways, as defined by FIFRA § 2(q), it is misbranding of a single product label and considered a single violation of FIFRA § 12(a)(1)(E). As a single violation of FIFRA, the maximum civil penalty assessed is up to $5,000 or $5,500, depending on when the violation occurred.

An independent violation of misbranding occurs each time that a misbranded product is sold or distributed. For instance, if a registrant sells or distributes four separate shipments of one misbranded pesticide product, EPA may assess a civil penalty of up to $20,000 or $22,000 depending on when the violation occurred. Therefore,

$5,000 X 4 [sales/distributions violations] = $20,000
- or -
$5,500 X 4 = $22,000

MISUSE. Distinct acts giving rise to violations of the same provision of FIFRA are independently assessable charges, even if the violative acts occurred during one pesticide application. For example, if a handler employer misused a registered product by failing to provide proper warning information for the pesticide application, failing to provide personal protective equipment, and failing to provide decontamination supplies, then each of those failures to act would be a separately assessable violation of FIFRA § 12(a)(2)(G). Each violation is subject to a penalty of up to $5,000 (before January 30, 1997) or $5,500 (on or after January 30, 1997). EPA may assess a civil penalty of up to $15,000 or $16,500. Therefore,

$5,000 X 3 [misuse violations] = $15,000
for violations committed before January 30, 1997
- or -
$5,500 x 3 = $16,500
for violations committed on or after January 30, 1997.

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To assist further with assessing multiple WPS misuse violations, consider the following categories as an area to assess a separate count: REI, POSTING, TRAINING, PPE, DECONTAMINATION, and EMERGENCY MEDICAL ASSISTANCE. These areas are recommended as a guide for assessing multiple misuse violations. Inspectors and Case Development Officers should prepare and provide evidence to support that violations for each category was a separate and distinct act.

The following is a step-by-step approach for determining the penalty calculation using the statutory penalty factors and the gravity adjustment factors as applied to the facts of the case. Remember that each analysis conducted is on a case-by-case basis and the following is a general approach.

1. Determining the Statutory Violations: FIFRA § 12 - Unlawful Acts

- See the WPS Penalty Policy - Attachment 2-A and 2-B, and FIFRA ERP Appendix A
- Summary of violations --

§ 12(a)(1)(E) - misbranding	40 CFR § 156, subpart K and § 170 incorporated by reference (NOTE: If there are other non-WPS violations, you may determine the penalty calculation by using the sample worksheet provided in the FIFRA ERP. Multiple violations (FIFRA and WPS) may be assessed on either sample worksheets.)
§ 12(a)(2)(G) - misuse	40 CFR §§ 156 subpart K and 170, incorporated by reference

- Other non-WPS statutory violations may be considered for products that have WPS labeling requirements, but those are not WPS misbranding and misuse violations.

2. Determining the appropriate FTTS Code

- See the WPS Penalty Policy Attachment 2-A or 2-B; new FIFRA & TSCA Tracking System (FTTS) codes have been created for WPS - Specific violations, starting with 1EN under § 12(a)(1)(E) for misbranding and 2GB under § 12(a)(2)(G) for misuse. This will allow for better tracking of Agency and State FIFRA enforcement actions.
- For other FIFRA violations, consult the FIFRA ERP Appendix A

3. Determining the Gravity Level.

- For misbranding, see the WPS Penalty Policy - Attachment 2-A, FIFRA WPS CHARGE AND GRAVITY LEVEL MATRIX list the violations subject to 40 CFR Parts 156 and 170 for registered products bearing WPS Labeling. Misbranding violations fall under FIFRA § 12(a)(1)(E). The appropriate 40 CFR section is also provided. Each citation includes a unique FTTS Code. When the appropriate violation is determined, the gravity level associated with the violation in the last column is assigned.
- Reminder: FIFRA § 2(q) should also be reviewed to determine the appropriate statutory definition for misbranding violations since this will be cited in the complaint. Most often the definition of misbranding for WPS-related products fall under FIFRA §§ 2(q)(1)(F) and 2(q)(1)(G).
- For misuse, see the WPS Penalty Policy - Attachment 2-B. The same format applies with determining the gravity level.

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4. Determining the Violator Category:

- See the WPS Penalty Policy - DETERMINING THE APPROPRIATE RECIPIENT OR RESPONDENT
- FIFRA ERP - pgs. 10, 17 and 18
- Summary of violators
  - §14(a)(1) - registrant, commercial applicator, wholesaler or other distributor
  - §14(a)(2) - private applicator or other person that is not a registrant, commercial applicator, wholesaler or other distributor; "for-hire" applicator

5. Determining the Size of Business Category:

- See the FIFRA ERP, Table 2 (pg. 20), to determine the appropriate violator category. If no supporting documentation is available to determine the violator's size of business category, then the volation should be considered a size I business as stated in the FIFRA ERP (pg. 21). Other documentation include:
- Dun & Bradstreet report(s) - should be used for (14)(a)(1) violators but may not be for (14)(a)(2) violators;
- Securities Exchange Commission (SEC) 10K and 10Q financial reports - must be filed by companies that issue public stock.
- Since the size of business is generally determined from an violator's gross revenues from all revenue sources during the prior calendar year, this information may not be readily available when the violator is an agricultural or handler employer. The Case Development Officer an/or Inspector should make attempts (in writing) to ask for appropriate documentation, such as tax returns, financial statements, *etc.*, from the violator. Those records are to be provided to the Agency at the violator's expense and must conform to generally recognized accounting principles and procedures. If no response is provided, then the Case Development Officer and Attorney team should proceed with assessing the penalty and issuance of a complaint with the violation considered at a size I business category.

6. Determining the Base Penalty:

- See the FIFRA ERP, Table 1 (pg. 19) - for violations that occur before 1/30/97
- See the WPS Penalty Policy Attachment 3- CIVIL MONETARY PENALTY INFLATION ADJUSTMENT RULE ; December 31, 1996; 61 FR 69361), see Table A for violations that occur on or after 1/30/97.

FIFRA	Maximum penalty amount for violations that occur before January 30, 1997	Maximum penalty amount for violations that occur on or after January 30, 1997
§ 14(a)(1) -- GENERAL COMMERCIAL APPLICATORS, *etc.* [7 U.S.C. 1361(1)]...	$5,000	$5,500
§ 14(a)(2) -- PRIVATE APPLICATORS - 1ST & SUBSEQUENT OFFENSES OR VIOLATIONS [7 U.S.C. 1361(2)]...	$500	$550
	$1,000	$1,100

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7. Evaluating the Gravity Adjustments Criteria:

- The gravity adjustment criteria are not to be used for training, recordkeeping or reporting violations as cited in the FIFRA ERP (pg. B-3, APPENDIX B FOOTNOTE number 1).

- In the FIFRA ERP, the gravity adjustment criteria consists of the gravity of harm (by the pesticide misbranding/misuse and harm to human health and the environment) and gravity of misconduct (which includes the compliance history and culpability). The WPS Penalty Policy has expanded this to consider circumstances that describe hazard, risk, and resulting injury to agriculture workers and handlers. When conducting an inspection and case development, these elements should also be considered.

- Gravity adjustment criteria also apply for misbranding violation. If unable to determine the harm to humans (item 7b and 7c), the default entered is "unknown" or "no known" facts to consider.

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VIOLATION	Gravity Value	CIRCUMSTANCES
7a. Pesticide Toxicity	3	Failure to implement or comply with the WPS requirement involving a Toxicity Level I pesticide or pesticides associated with chronic health effects (mutagenicity, oncogenicity, teratogenicity, *etc.*). Signal Word "DANGER," "EXTREMELY FLAMMABLE" or "FLAMMABLE." Restricted Use Pesticide (RUP). Unregistered pesticide that requires WPS labeling.
	2	Failure to implement or comply with the WPS requirement involving a Toxicity Level II pesticide. Signal work "WARNING."
	1	Failure to implement or comply with the WPS requirement involving a Toxicity III or IV pesticide. Signal work "CAUTION." No known chronic effects.
7b. Human Exposure	5	Large number of agricultural employees exposed.
	3	Medium Number of agricultural employees exposed, or no known exposure resulting.
	1	Small number of agriculture employees exposed.
	0	No agricultural employees were exposed.
7c. Human Injury	5	One or more deaths or serious injury. Widespread serious injury incurred.
	3	One serious or more than ten persons with injuries incurred, or number and severity of injuries unkowned.
	1	Fewer than ten persons with minor injuries incurred.
	0	No injuries incurred; no adverse health effects.
7d. Environmental Harm	**Since the WPS is designed to protect human health, environmental harm is not considered here. For misbranding violations refer to the FIFRA ERP (APPENDIX B) to determine the gravity adjustment level for harm to the environment.**	
7e. Compliance History[5]	5	§14(a)(1) violator category with more than one prior FIFRA violation and at least one gravity "level 1" violation; §14(a)(2) violator category with more than two prior FIFRA violations and at least one prior gravity "level 1" violations.
	4	§14(a)(1) violator category with more than one prior FIFRA violation and no prior gravity "level 1" violations. §14(a)(2) violator category with more than two prior FIFRA violations and no prior gravity "level 1" violations.
	2	§14(a)(1) violator category with one prior FIFRA violation. §14(a)(2) violator category with two prior FIFRA violations.
	0	No prior FIFRA violations.
7f. Culpability	4	Knowing or willful violation of FIFRA[6]; knowledge of the general hazardousness of action.
	2	Violation resulting from negligence, or culpability unknown.
	0	Violation was neither knowing nor willful and did not result from negligence. Violator institute steps to correct the violation immediately after discover of violation.

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5 For factors in determining what a "Prior Violation" is, see FIFRA ERP, APPENDIX B, pg. B-3 (footnote 4).

6 See FIFRA ERP CRIMINAL PROCEEDINGS (pg. 12) and APPENDIX B FOOTNOTES (pg. B-3) for further clarification. Criminal proceedings may be considered for "knowing and willful" violations.

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7g. Total Gravity: Add all the gravity adjustment values assigned for items 7a. to 7f.

7h. Percent Adjustment: See the FIFRA ERP TABLE 3 (pg. 22) for determining the enforcement remedy. Once the TOTAL GRAVITY value has been determined (item 7g.), select and enter the appropriate percentage adjustment.

7i. Dollar Adjustment:

- Once the percent adjustment (item 7h.) has been determined, calculate and enter the dollar adjustment per count or per product.
- The base penalty determined from the civil penalty matrix (item 6) can be increased to the statutory maximum of $5,500 or $5,000 per violation for persons under FIFRA § 14(a)(1) and $1,100 or $1,000 for persons under FIFRA §14(a)(2), depending on when the violation occurred.
- If the base penalty on item 6 is already assigned the statutory maximum, then enter a "0" value.

8. Base Penalty after Adjustments: Calculate and enter the final penalty amount per count or per product, as appropriate.

9. Total Proposed Penalty: Add each amount from item 8 for the combined total.

10. Ability to Pay:

- See the FIFRA ERP ABILITY TO CONTINUE IN BUSINESS/ABILITY TO PAY (pg. 23), which discusses three methods that can be used to determine a violator's ability to pay depending on the specifics of the case.

- If information is available in whole or in part, to determine a violator's ability to pay, then that ability can be considered and entered to the penalty calculation worksheet.

- If no information is available at the time the penalty calculation is performed, then the full adjusted penalty should be assessed in the compliant.

- Ability to pay issues should then be considered in settlement, should the violator provide the required information.

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ATTACHMENT 1

Guidance on Issuance of Worker Protection Standard Enforcement Actions in Response to Personal Protective Equipment Violations

60 FR 18101 (April 10, 1995)

[Or most recent version]

OCT 21

[OPP-00406; FRL-4948-3]

Guidance on Issuance of Worker Protection Standard Enforcement Actions in Response to Personal Protective Equipment Violations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On February 13, 1995, the Agency distributed its "Summary Guidance on Issuance of WPS Enforcement Actions" which applied to any violations of the Worker Protection Standard (WPS). EPA was recently asked to distribute further guidance specific to enforcement of the personal protective equipment (PPE) provisions of the WPS. In response, the Agency developed guidance which applies to PPE violations the 10 factors which EPA recommends be considered in determining the appropriate recipients of WPS enforcement actions. This guidance was distributed to EPA Regional Offices on March 30, 1995, for transmittal to state pesticide enforcement personnel, the intended audience for the guidance. EPA is publishing the March 30th guidance at the request of a state organization.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sims, Toxics and Pesticides Enforcement Division, Office of Enforcement and Compliance Assurance, 2245A, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 564-4048.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is providing this document in response to requests made for specific guidance concerning enforcement of the PPE provisions of the FIFRA WPS. This summary guidance is organized according to the 10 factors to be considered in determining the appropriate recipients of WPS enforcement actions, and employers/owners/operators' PPE responsibilities.

II. Ten Factors for Consideration

EPA recommends that accountability for compliance with the FIFRA WPS be decided on a common sense, case-by-case basis. "Summary Guidance on Issuance of WPS Enforcement Actions," provided February 1995, identifies the following 10 factors which EPA recommends States consider when they need to determine the appropriate recipient(s) of a WPS enforcement action:

1. Who has control over pesticide use;
2. Who directs pesticide use;
3. Who has control over the agricultural establishment for posting and other WPS-related responsibilities;
4. Who gives direction on the agricultural establishment for posting and other WPS-related responsibilities;
5. Who has control over the practices used by agricultural workers on the establishment;
6. Who directs the practices used by agricultural workers on the establishment;
7. Measures taken to comply with provisions of the WPS;
8. Actions taken in response to incidents of noncompliance;
9. History of prior violations; and
10. Ability to assure continuing compliance with the WPS.

Documentation by employers/owners/operators could assist them in demonstrating to State regulatory officials, their efforts to comply and responses to instances of noncompliance. The totality of the circumstances should be considered in each case. The 10 factors are not listed in any order of priority; each factor should be appropriately considered in every case.

III. Employers/Owners/Operators PPE Responsibilities

The 10 factors should be considered if an employee (including workers and handlers) does not use PPE required by the WPS. It is essential for employers/owners/operators to take an active role to assure that PPE is used.

The employer/owner/operator bears primary responsibility for WPS PPE compliance. Employers/owners/operators must provide, clean and maintain PPE, and instruct employees on its proper use. The employer/owner/operator has a responsibility to inform employees who do not use their PPE that such clothing or protective gear is required. In the case of pesticide handlers, the responsibility to follow label directions and use PPE properly is a shared one with the employer.

The employer/owner/operator also has a responsibility to take appropriate actions if an agricultural employee does not comply with instructions to use PPE. If an employee does not use WPS required PPE, appropriate supervisory actions that could be taken by the employer/owner/operator to achieve compliance include warnings and nondiscriminatory discipline. If an employer/owner/operator provides employees with appropriate PPE, training and supervision per the specifications of the WPS, there should not arise an occasion on which the employer/owner/operator would be subject to a WPS/PPE enforcement action due to the individual decision of an agricultural employee not to use the PPE.

Enforcement officials will consider the facts of a case before determining how to respond to any WPS violation, consistent with the 10 factors identified in the Agency's February 1995 summary WPS enforcement guidance. EPA recommends that accountability for compliance be decided on a common sense basis, and that the totality of the circumstances be considered in each case, including enforcement actions in response to PPE violations.

Dated: April 4, 1995.

Jesse Baskerville,

Director, Toxics and Pesticides Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 95-8726 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-F

OCT 21

ATTACHMENT 2-A

FIFRA WPS CHARGES AND GRAVITY LEVEL MATRIX

for

MISBRANDING VIOLATIONS

Subject to 40 CFR Parts 156 & 170

for Registered Products Bearing WPS Labeling

or

Unregistered Products Requiring WPS Labeling

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Page inserted intentionally---- PLEASE NOTE

DATA ENTRY OF FTTS CODES 1EN TO 2G6, FOR WPS-SPECIFIC MISBRANDING AND MISUSE VIOLATIONS IN THE NATIONAL COMPLIANCE DATA BASE (NCDB) FROM THE FTTS FORMS WILL BE ALLOWED ONLY AFTER MODIFICATION OF THE NCDB HAS BEEN COMPLETED BY THE OFFICE OF COMPLIANCE.

THE NEXT FTTS UPDATE IS SCHEDULED TO TAKE PLACE IN MARCH 1998. IN THE MEANTIME, PLEASE FOLLOWING THE PROCEDURES PROVIDED BELOW:

1. ENTER THE FTTS CODES FOR MISBRANDING AS 1EF OR 1EG, AND FOR MISUSE AS 2GA.

2. USE THE MEMO FIELD ON THE FTTS FORM TO INDICATE WHICH "NEW" FTTS CODE WOULD APPLY FROM NOW UNTIL THE NCDB MODIFICATION IS COMPLETED.

3. ONCE THE NCDB REVISIONS HAVE BEEN COMPLETED, REVISE THE FTTS FORM WITH THE APPROPRIATE "NEW" FTTS CODE.

4. ALSO MAKE THE APPROPRIATE CHANGES ON A REVISED PENALTY CALCULATION WORKSHEET, DATED AND SIGNED.

A NOTICE WILL BE CIRCULATED TO ALL EPA REGIONAL OFFICES WHEN THE NCDB UPDATE HAS BEEN COMPLETED.

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Attachment 2-A

FIFRA WPS Charge and Gravity Level Matrix

FIFRA §§ 12(a)(1)(E) 2(q)(1)(F) or 2(q)(1)(G)	FTTS Code	MISBRANDING VIOLATIONS Subject to 40 CFR Parts 156 and 170 for pesticides requiring WPS Labeling	Gravity Level
40 CFR 156.206(a)	1EN	*Application restrictions.* Sold or distributed a MISBRANDED pesticide where the label failed to bear a statement that prohibits making contact with any person, directly or through drift, with the pesticide during application.	1
40 CFR 156.206(b)	1EO	*Application restrictions.* Sold or distributed a MISBRANDED pesticide where the label failed to bear the WPS reference statement.	1
40 CFR 156.206(b)	1EP	*Application restrictions.* Sold or distributed a MISBRANDED pesticide where the WPS reference statement is incomplete or erroneous making the meaning unintelligible.	2
40 CFR 156.206(b)	1EQ	*Application restrictions.* Sold or distributed a MISBRANDED pesticide where the label bears an erroneous WPS reference statement, but the WPS is still intelligible.	3
40 CFR 156.206(c)	1ER	*Application restrictions.* Sold or distributed a MISBRANDED pesticide where the label failed to bear the designation (when required) that the product is an organophosphate, n-methyl carbamate, or fumigant.	1
40 CFR 156.206(d)	1ES	*Application restrictions.* Sold or distributed a MISBRANDED pesticide where the label failed to bear the appropriate State's restriction(s) statement.	1
40 CFR 156.206(e)	1ET	*Application restrictions.* Sold or distributed a MISBRANDED pesticide where and the label failed to bear the signal word in Spanish, a the warning statement in Spanish, when required.	1
40 CFR 156.208	1EU	*REI statements.* Sold or distributed a MISBRANDED pesticide where and the label failed to bear the required minimum restricted-entry interval (REI).	1
40 CFR 156.210	1EV	*Notification-to-workers statements.* Sold or distributed a MISBRANDED pesticide where the label failed to specify that workers be notified both orally and through posting about treated areas.	2
40 CFR 156.212	1EW	*PPE statements.* Sold or distributed a MISBRANDED pesticide where the label failed to bear the required minimum personal protective equipment required for handlers or early-entry workers.	1
40 CFR 156.206, 156.208, 156.210, 156.212	1EX	Sold or distributed a MISBRANDED pesticide where the label bears WPS-related statements that contain other technical errors, but those errors did not result in a diminishment of protection.	3

ATTACHMENT 2-B

FIFRA WPS CHARGES AND GRAVITY LEVEL MATRIX

for

MISUSE VIOLATIONS

Subject to 40 CFR Parts 156 & 170

for Registered Products Bearing WPS Labeling

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Attachment 2-B

FIFRA WPS Charge and Gravity Level Matrix

FIFRA § 12(a)(2)(G) 40 CFR 170.9	FTTS Code	MISUSE VIOLATIONS Subject to 40 CFR Parts 156 & 170 for Registered Products Bearing WPS Labeling	Gravity Level
40 CFR 170.110(a)	2GB	*Farms & forests.* Agricultural Employer failed to restrict any person other than an appropriately trained and equipped handler, from entering or remaining in the treated area during a pesticide application.	1
40 CFR 170.110(b)	2GC	*Nurseries.* Agricultural Employer failed to restrict any person, other than an appropriately trained and equipped handler, from entering or remaining in the area as specified during a pesticide application.	1
40 CFR 170.110(c)(1)	2GD	*Greenhouses.* Agricultural Employer failed to restrict any person other than an appropriately trained and equipped handler, from entering or remaining in the treated area when a pesticide is applied.	1
40 CFR 170.110(c)(2)	2GE	*Greenhouses.* Agricultural Employer failed to restrict any worker from entering or remaining in the treated areas after a pesticide is applied.	2
40 CFR 170.112(a)	2GF	*General entry restrictions.* Agricultural Employer failed to restrict any worker from entering or remaining in the treated area, after the pesticide application, but before the REI specified on the labeling has expired.	1
40 CFR 170.120(a) & (b)	2GG	*Notification to workers: In greenhouses, on farms, in nurseries, or in forests.* Agricultural Employer failed to notify workers of any pesticide application.	2
40 CFR 170.122	2GH	*Specific Information.* Agricultural Employer failed to display required information about a pesticide within 30 days after the application of the pesticide on the establishment or after an REI had been in effect, while workers were on the agricultural establishment.	2
40 CFR 170.124	2GI	*Handler notification.* Agricultural Employer failed to provide a handler employer with information about, and failed to assure the handler employer was aware of areas that may be treated with pesticides, or that may be under an REI .	2
40 CFR 170.130(a)	2GJ	*Safety training.* Agricultural Employer failed to assure that each worker had been proper trained.	1
40 CFR 170.135	2GK	*Posting pesticide safety information.* Agricultural Employer failed to display pesticide safety information for workers on an agricultural establishment within 30 days after a pesticide had been applied or after an REI had been in effect.	2
40 CFR 170.150	2GL	*Decontamination.* Agricultural Employer failed to provide decontamination supplies for workers.	1
40 CFR 170.160	2GM	*Emergency assistance.* Agricultural Employer failed to provide emergency medical assistance.	1

FIFRA § 12(a)(2)(G) 40 CFR 170.9	FTTS Code	MISUSE VIOLATIONS Subject to 40 CFR Parts 156 & 170 for Registered Products Bearing WPS Labeling	Gravity Level
40 CFR 170.210(a)	2GN	*Contact with workers and other persons.* Handler Employer failed to assure that no pesticide was applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handler.	1
40 CFR 170.210(b)	2GO	*Contact with Highly Toxic Pesticides.* Handler Employer failed to assure than any handler performing any handling activity with a product that has the skull and crossbones symbol on the front panel of the label is monitored visually or by voice communication at least every 2 hours.	2
40 CFR 170.210(c)(2)	2GP	*Fumigant Application in Greenhouses.* Handler Employer failed to assure that other handlers as specified had immediate access to the PPE required by the fumigant labeling for handlers.	1
40 CFR 170.222	2GQ	*Posting.* Handler Employer failed to display specific information about the pesticide while workers were on the agricultural establishment within 30 days after the application on the establishment or an REI had been in effect.	2
40 CFR 170.224	2GR	*Agricultural Employer Notification.* Handler Employer failed to provide the agricultural employer with information about and failed to assure the agricultural employer was aware of the required pesticide information.	3
40 CFR 170.230(a)	2GS	*Pesticide Safety Trainer.* Handler Employer failed to assure that each worker had been trained as required.	1
40 CFR 170.232(a)	2GT	*Labeling information.* Handler Employer failed to assure that each handler either read the product labeling or had been informed of the requirements or had access to the product labeling information.	1
40 CFR 170.232(b)	2GU	*Site specific information.* Handler Employer failed to assure that each commercial handler was aware of the required information concerning any pesticide treated areas on the agricultural establishment or areas under an REI required on the agricultural establishment.	2
40 CFR 170.234(a)	2GV	*Safety instructions.* Handler Employer failed to assure that before any handler was instructed properly in the safe operation of such equipment.	1
40 CFR 170.234(b)	2GW	*Maintenance.* Handler Employer failed to assure that equipment was inspected, repaired or replaced.	2
40 CFR 170.234(c)	2GX	*Management safety*. Handler Employer failed to assure that the pesticide residues had been removed from the equipment prior to maintenance, or that the person performing maintenance was notified of pesticides contamination.	3
40 CFR 170.235	2GY	*Posting pesticide safety information.* Handler Employer failed to display pesticide safety information for handlers.	2
40 CFR 170.240(a)	2GZ	*PPE requirements.* Pesticide Handler failed to use clothing and PPE.	2

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FIFRA § 12(a)(2)(G) 40 CFR 170.9	FTTS Code	MISUSE VIOLATIONS Subject to 40 CFR Parts 156 & 170 for Registered Products Bearing WPS Labeling	Gravity Level
40 CFR 170.240(c)	2G1	*PPE requirements.* Handler Employer failed to provide the appropriate PPE.	1
40 CFR 170.240(e)	2G2	*PPE requirements.* Handler Employer failed to assure that PPE was used correctly.	2
40 CFR 170.240(f)	2G3	*PPE maintenance.* Handler Employer failed to assure that all PPE was cleaned and maintained.	1
40 CFR 170.240(g)	2G4	*PPE heat-related illness.* Handler Employer failed to assure that appropriate measures were taken to prevent heat-related illness.	1
40 CFR 170.250	2G5	*Decontamination.* Handler Employer failed to provide decontamination supplies.	2
40 CFR 170.260	2G6	*Emergency Assistance.* Handler Employer failed to provide emergency assistance.	1

ATTACHMENT 3

Civil Monetary Penalty Inflation Adjustment Rule

61 FR 69360

see 40 CFR part 19

(Recommended you insert subsequent adjustments of civil penalties here.)

federal register

Tuesday
December 31, 1996

Part V

Environmental Protection Agency

40 CFR Parts 19 and 27
Civil Monetary Penalty Inflation Adjustment Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 19 and 27

[FRL-5671-1]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

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

EFFECTIVE DATE: January 30, 1997.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1] The "inflation factor" is the result of dividing the June 1996 CPI by the CPI for June of the year the penalty was last set or adjusted.
[2] The penalties must be rounded after the inflation adjustment pursuant to Public Law 101–410 Sec. 5A.

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

Procedural Requirements

I. Administrative Procedure Act

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

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

II. Small Business Regulatory Enforcement Fairness Act

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

III. Executive Order 12866-Regulatory Review

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

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

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

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

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

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

IV. Unfunded Mandates Reform Act

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

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

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

V. Regulatory Flexibility Act

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

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

VI. Paperwork Reduction Act

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

List of Subjects

40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

40 CFR Part 27

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

Dated: December 20, 1996.

Carol M. Browner,

Administrator.

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

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

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

Sec.

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

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

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

§ 19.1 Applicability.

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

§ 19.2 Effective Date.

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

§ 19.3 [Reserved].

§ 19.4 Penalty Adjustment and Table.

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

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

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

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

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

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

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

PART 27—[AMENDED]

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

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

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

§ 27.3 Basis for civil penalties and assessments.

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

(i) Is false, fictitious, or fraudulent;

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

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

(A) Omits a material fact;

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

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

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

* * * * *

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

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

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

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

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

* * * * *

[FR Doc. 96–32972 Filed 12–30–96; 8:45 am]

BILLING CODE 6560–50–P

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

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

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USEPA, 1992. Worker Protection Standard; Final Rule. FEDERAL REGISTER 57(163): 38102-38165 (August 21, 1992)

USEPA, 1995. Case Development Training Manual. Toxics & Pesticides Enforcement Division, Office of Regulatory Enforcement. 312 pp.

USEPA, 1995. Guidance on Issuance of Worker Protection Standard Enforcement Actions in Response to Personal Protective Equipment Violations; Notice. FEDERAL REGISTER 60(68): 18101 (April 10, 1995)

USEPA, 1996. Civil Monetary Penalty Inflation Adjustment Rule; Final Rule. FEDERAL REGISTER 61(252): 69360-69361 (December 31, 1996)

USEPA, 1996. Code of Federal Regulations. 40 CFR Parts 156 and 170

USEPA, 1996. Litigating Civil Penalties, Strategies--Techniques--Tools, Selected Resource Materials. National Enforcement Training Institute (NETI). 373 pp.

USEPA, 1997. Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Food, Drug, and Cosmetic Act (FFDCA) as Amended by the Food Quality Protection Act (FQPA) of August 3, 1996. Office of Pesticides Programs. 730L97001; March 1997

USEPA. Code of Federal Regulations. 40 CFR Parts 156 and 170 [current edition]

EXAMPLES

Scenario 1: Registrant Company sells and distributes a total of 379 shipments of four pesticide products with labeling not in compliance with WPS 40 CFR 156, Subpart K.

Case development: Complaint is cited under FIFRA § 12(a)(1)(E), sale and distribution of a misbranded label as defined under FIFRA § 2(q)(1)(F) and (E) by a 14(a)(1) violator.

- Product A had 32 separate sales = 32 counts
- Product B had 10 separate sales = 10 counts
- Product C had 325 separate sales = 325 counts, and
- Product D had 12 separate sales = 12 counts.

  Total number of counts = 379

Based on the facts of the case, the case development officer (CDO) determined that the gravity base penalty at $5,000. Shipments occurred prior to January 30, 1997.

Penalty calculation: $5000 X 379 = $1,895,000

Scenario 2: A State pesticide inspector conducts a return inspection of an agricultural establishment (farm) that employs 100 workers. The State inspector finds that the employer didn't provide adequate eyewash, posting of required sign and information, decontamination supplies (potable water) and training to workers.

Case development: There is the legal authority to assess multiple misuse violations for a single application if an agricultural employer violates several WPS misuse provisions (40 CFR 170). It makes more sense if they are categorized different, *i.e.*, fail to provide decontamination supplies and failed to post properly. These provisions are very distinct activities. However, if you failed to post and used the wrong typeface, then you technical can assess both violation, but they don't have clear, separate circumstances of violations to charge both.

The State inspector had visited the Farmer, a private applicator, on two prior compliance assistance inspections. The second inspection resulted in the issuance of a NOW in 1996 for the following: 1 - lack of training to workers, 2 - decontamination sites doesn't have potable water, towels, and changes of clothes, 3- emergency poster doesn't have information needed, and 4 - eyewash was not immediately available. Upon revisit of the establishment for an enforcement inspection in 1997, the State inspector noted the same set of violations.

A complaint was issued with penalties assessed at the State's statutory maximum ($1000) for private applicator under FIFRA § 14(a)(2). The FIFRA § 12(a)(2)(G) violations were determined as follows:

- One violation count for failure to provide training to workers [40 CFR 170.230(a)]

- One violation count for failure to provide decontamination supplies [40 CFR 170.250]; sites didn't have potable water, towels, and changes of clothes, or protective eyewash. The eyewash requirement was not considered a separate violation from the other decontamination requirements because it did not involve a separate action.

- One violation count for failure to provide proper posting [40 CFR 170.222].

Penalty calculation:

Total violations = 3
Gravity penalty = $1000
Total penalty assessed = $1000 X 3 = $3,000

NOTES

WPS PENALTY CALCULATION WORKSHEET

- The attached worksheet is formatted for use for FIFRA WPS misbranding and misuse cases. Using this worksheet does not preclude you from also assessing penalty amounts for other non-WPS violations that may have occurred (such as when environmental harm occurs, or other FIFRA labeling and misuse violations).

- A separate column should be used to assess the penalty per violation.

- This form should be completed, signed and dated by the Case Development Officer and made as part of the case file **before** the issuance of a complaint in the event that the Agency goes to litigation.

- An electronic version of the worksheet is available from the Toxics and Pesticides Enforcement Division upon request (WordPerfect version 6.1).

Respondent:
Address:
City, State, Zip:

Docket No.:

FIFRA WPS CIVIL PENALTY CALCULATION WORKSHEET	**Prepared by:** **Date:**			
Pesticide Product:				
WPS PEN. POLICY - ATTACHMENT 2 1. Statutory Violation				
2. FTTS Code				
3. Gravity Level				
WPS PEN. POLICY/FIFRA ERP 4. Violator Category				
FIFRA ERP TABLE 2 5. Size of Business Category				
FIFRA ERP TABLE 1/WPS PEN. POLICY - ATTACHMENT 3 6. Base Penalty				
7. Gravity Adjustments (FIFRA ERP APPENDIX B/WPS PEN. POLICY)				
a. Pesticide Toxicity				
b. Human Health-- Exposure				
c. Human Health--Injury				
d. Environmental Harm				
e. Compliance History				
f. Culpability				
g. Total Gravity Adjustment Value (add 7a. thru 7f.)				
FIFRA ERP TABLE 3 h. Percent Adjustment				
i. Dollar Adjustment				
8. Final Penalty (subtract 7h from 6)				
9. TOTAL PROPOSED PENALTY (total of all columns for line 8, above):	$			
10. ABILITY TO PAY	$			