



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

JUN 15 2018

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

SUBJECT: Interim Final Penalty Policy for the FIFRA Worker Protection Standard (WPS)  
(edited May 2018)

FROM: Gregory Sullivan, Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement

TO: FIFRA Enforcement Managers and Counsel

A handwritten signature in blue ink, appearing to read "Gregory Sullivan", is written over the "FROM:" field.

This memorandum transmits the **Interim Final Penalty Policy for the FIFRA Worker Protection Standard (WPS) (edited May 2018)** (“the Policy”), which provides guidance for practitioners taking enforcement action for violations of the Worker Protection Standard (WPS) regulations, set forth at 40 C.F.R. part 170, promulgated under the authority in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136-136y. The edits made to this document include updating penalty information and removing outdated instructions and references. This Policy supersedes all previous versions. This Policy is immediately applicable and should be used to calculate penalties sought in all FIFRA WPS administrative actions or accepted in settlement of such actions. To the extent practicable, this Policy also applies to the settlement of FIFRA WPS administrative enforcement actions instituted but not yet resolved prior to the issuance date of this Policy.

As you may be aware, a revised enforcement response policy for the WPS is in development. These revisions are expected to be finalized after revisions to the core FIFRA enforcement response policy are complete. The attached Policy will remain in effect until the revised enforcement response policy for the WPS is issued.

Please distribute this document to the appropriate personnel as soon as possible. An electronic version of this document has been posted to the EPA website. If you have any questions, comments, or are in need of further assistance, please contact Pesticides and Tanks Enforcement Branch staff Yvette Hellyer, (202) 564-4033 or [Hellyer.Yvette@epa.gov](mailto:Hellyer.Yvette@epa.gov) or Christina Cobb, (202) 564-1798 or [Cobb.Christina@epa.gov](mailto:Cobb.Christina@epa.gov).

Attachments

**WORKER PROTECTION STANDARD  
PENALTY POLICY**

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

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**Introduction**

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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.

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**Assessing the FIFRA WPS Enforcement Actions For Misbranding and Misuse Violations**

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**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 appropriate 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.

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**Levels of Enforcement Response Action**

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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

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 not a registrant, commercial applicator, wholesaler or other distributor (also known as a 14(a)(2) violator category) shall 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

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<sup>1</sup>.

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<sup>1</sup>.** 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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<sup>1</sup> 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).

## Determining the Appropriate Enforcement Response

In conclusion, the following chart summarizes 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 <sup>2</sup> OR Wholesaler OR Dealer OR Retailer OR Distributor <sup>1</sup>	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 <sup>3</sup>	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 <sup>2</sup>
Private applicator <sup>1</sup>	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 <sup>2,4</sup>
“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 <sup>1</sup>	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 <sup>2,3</sup> .

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Prior written warning or citation will be considered for any FIFRA violation.

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## Calculating the Penalty --- Step-by-Step

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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,

$$\begin{aligned} \$5,000 \times 4 \text{ [sales/distributions violations]} &= \$20,000 \\ &\text{- or -} \\ \$5,500 \times 4 &= \$22,000 \end{aligned}$$

**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,

$$\begin{aligned} \$5,000 \times 3 \text{ [misuse violations]} &= \$15,000 \\ &\text{for violations committed before January 30, 1997} \\ &\text{- or -} \\ \$5,500 \times 3 &= \$16,500 \\ &\text{for violations committed on or after January 30, 1997.} \end{aligned}$$

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.

**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 violation 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, <i>etc.</i> [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



## **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.

<b>VIOLATION</b>	<b>Gravity Value</b>	<b>CIRCUMSTANCES</b>
<b>7a. Pesticide Toxicity</b>	<b>3</b>	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, <i>etc.</i> ). Signal Word "DANGER," "EXTREMELY FLAMMABLE" or "FLAMMABLE." Restricted Use Pesticide (RUP). Unregistered pesticide that requires WPS labeling.
	<b>2</b>	Failure to implement or comply with the WPS requirement involving a Toxicity Level II pesticide. Signal work "WARNING."
	<b>1</b>	Failure to implement or comply with the WPS requirement involving a Toxicity III or IV pesticide. Signal work "CAUTION." No known chronic effects.
<b>7b. Human Exposure</b>	<b>5</b>	Large number of agricultural employees exposed.
	<b>3</b>	Medium Number of agricultural employees exposed, or no known exposure resulting.
	<b>1</b>	Small number of agriculture employees exposed.
	<b>0</b>	No agricultural employees were exposed.
<b>7c. Human Injury</b>	<b>5</b>	One or more deaths or serious injury. Widespread serious injury incurred.
	<b>3</b>	One serious or more than ten persons with injuries incurred, or number and severity of injuries unknown.
	<b>1</b>	Fewer than ten persons with minor injuries incurred.
	<b>0</b>	No injuries incurred; no adverse health effects.
<b>7d. Environmental Harm</b>	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.	
<b>7e. Compliance History<sup>5</sup></b>	<b>5</b>	§14(a)(1) violator category with more than one prior FIFRA violation <u>and</u> at least one gravity "level 1" violation; §14(a)(2) violator category with more than two prior FIFRA violations <u>and</u> at least one prior gravity "level 1" violations.
	<b>4</b>	§14(a)(1) violator category with more than one prior FIFRA violation <u>and</u> no prior gravity "level 1" violations. §14(a)(2) violator category with more than two prior FIFRA violations <u>and</u> no prior gravity "level 1" violations.
	<b>2</b>	§14(a)(1) violator category with one prior FIFRA violation. §14(a)(2) violator category with two prior FIFRA violations.
	<b>0</b>	No prior FIFRA violations.
<b>7f. Culpability</b>	<b>4</b>	Knowing or willful violation of FIFRA <sup>6</sup> ; knowledge of the general hazardousness of action.
	<b>2</b>	Violation resulting from negligence, or culpability unknown.
	<b>0</b>	Violation was neither knowing nor willful and did not result from negligence. Violator institute steps to correct the violation immediately after discover of violation.

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

<sup>6</sup> 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.

**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.

## **ATTACHMENT 1**

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### **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]**

[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.

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BILLING CODE 6660-50-F

**ATTACHMENT 2-A**

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**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

**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	<b>MISBRANDING VIOLATIONS</b> Subject to 40 CFR Parts 156 and 170 for pesticides requiring WPS Labeling	Gravity Level
40 CFR 156.206(a)	1EN	<i>Application restrictions.</i> 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	<i>Application restrictions.</i> Sold or distributed a MISBRANDED pesticide where the label failed to bear the WPS reference statement.	1
40 CFR 156.206(b)	1EP	<i>Application restrictions.</i> 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	<i>Application restrictions.</i> 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	<i>Application restrictions.</i> 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	<i>Application restrictions.</i> 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	<i>Application restrictions.</i> 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	<i>REI statements.</i> 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	<i>Notification-to-workers statements.</i> 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	<i>PPE statements.</i> 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**

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**FIFRA WPS CHARGES AND GRAVITY LEVEL MATRIX**

for

**MISUSE VIOLATIONS**

Subject to 40 CFR Parts 156 & 170

for Registered Products Bearing WPS Labeling



**Attachment 2-B**  
**FIFRA WPS Charge and Gravity Level Matrix**

<b>FIFRA § 12(a)(2)(G) 40 CFR 170.9</b>	<b>FTTS Code</b>	<b>MISUSE VIOLATIONS Subject to 40 CFR Parts 156 &amp; 170 for Registered Products Bearing WPS Labeling</b>	<b>Gravity Level</b>
40 CFR 170.110(a)	2GB	<i>Farms &amp; forests.</i> 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	<i>Nurseries.</i> 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	<i>Greenhouses.</i> 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	<i>Greenhouses.</i> 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	<i>General entry restrictions.</i> 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	<i>Notification to workers: In greenhouses, on farms, in nurseries, or in forests.</i> Agricultural Employer failed to notify workers of any pesticide application.	2
40 CFR 170.122	2GH	<i>Specific Information.</i> 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	<i>Handler notification.</i> 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	<i>Safety training.</i> Agricultural Employer failed to assure that each worker had been proper trained.	1
40 CFR 170.135	2GK	<i>Posting pesticide safety information.</i> 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	<i>Decontamination.</i> Agricultural Employer failed to provide decontamination supplies for workers.	1
40 CFR 170.160	2GM	<i>Emergency assistance.</i> 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	<i>Contact with workers and other persons.</i> 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	<i>Contact with Highly Toxic Pesticides.</i> 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	<i>Fumigant Application in Greenhouses.</i> 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	<i>Posting.</i> 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	<i>Agricultural Employer Notification.</i> 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	<i>Pesticide Safety Trainer.</i> Handler Employer failed to assure that each worker had been trained as required.	1
40 CFR 170.232(a)	2GT	<i>Labeling information.</i> 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	<i>Site specific information.</i> 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	<i>Safety instructions.</i> 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	<i>Maintenance.</i> Handler Employer failed to assure that equipment was inspected, repaired or replaced.	2
40 CFR 170.234(c)	2GX	<i>Management safety.</i> 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	<i>Posting pesticide safety information.</i> Handler Employer failed to display pesticide safety information for handlers.	2
40 CFR 170.240(a)	2GZ	<i>PPE requirements.</i> Pesticide Handler failed to use clothing and PPE.	2

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

## **ATTACHMENT 3**

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### **CIVIL MONETARY PENALTY INFLATION ADJUSTMENT RULE**

83 FR 1190

*See* 40 CFR part 19

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

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

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

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

publication dealing specifically with such matters.

#### List of Subjects in 39 CFR Part 113

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

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

#### PART 113—HAZARDOUS, RESTRICTED, AND PERISHABLE MAIL

Sec.

113.1 Scope and purpose.

113.2 Incorporation by reference.

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

##### § 113.1 Scope and purpose.

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

##### § 113.2 Incorporation by reference.

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

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

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

(2) [Reserved]

**Stanley F. Mires,**  
*Attorney, Federal Compliance.*

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

**BILLING CODE 7710–12–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 19

[FRL–9972–92–OECA]

#### Civil Monetary Penalty Inflation Adjustment Rule

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of statutory civil monetary penalty amounts under the statutes EPA administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“the 2015 Act”). The 2015 Act prescribes a formula for annually adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law. The rule does not necessarily revise the penalty amounts that EPA chooses to seek pursuant to its civil penalty policies in a particular case. EPA’s civil penalty policies, which guide enforcement personnel in how to exercise EPA’s statutory penalty authorities, take into account a number of fact-specific considerations, *e.g.*, the seriousness of the violation, the violator’s good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator’s ability to pay.

**DATES:** This final rule is effective on January 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** David Smith-Watts, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2241A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone number: (202) 564–4083; [smith-watts.david@epa.gov](mailto: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

<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.”

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: (1) Adjust the level of statutory civil penalties with an initial "catch-up" adjustment through an interim final rulemaking; and (2) beginning January 15, 2017, make subsequent annual adjustments for inflation. The purpose of the 2015 Act is to maintain the deterrent effect of civil penalties by translating originally enacted statutory civil penalty amounts to today's dollars and rounding statutory civil penalties to the nearest dollar.

As required by the 2015 Act, EPA issued a catch up rule on July 1, 2016, which was effective August 1, 2016 (81 FR 43091), and EPA made its first annual adjustment on January 12, 2017, which was effective January 15, 2017 (82 FR 3633). Today's rule implements the second annual penalty inflation adjustments mandated by the 2015 Act. Section 4 of the 2015 Act requires each federal agency to publish annual adjustments to all civil penalties under the laws implemented by that agency. These annual adjustments are required to be published by January 15 of each year. The 2015 Act describes the method for calculating the adjustments. Each statutory maximum civil monetary penalty is multiplied by the cost-of-living adjustment, which is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2017 exceeds the CPI-U for the month of October 2016.

With this rule, the new statutory maximum (or minimum<sup>3</sup>) penalty levels

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

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

*Step 1:* The cost-of-living adjustment multiplier for 2018, based on the CPI-U of October 2017, is 1.02041.<sup>4</sup> Multiply 1.02041 by the current penalty amount. This is the raw adjusted penalty value.

*Step 2:* Round the raw adjusted penalty value. Section 5 of the 2015 Act states that any adjustment shall be rounded to the nearest multiple of \$1. The result is the final penalty value for the year.

## II. The 2015 Act Requires Federal Agencies To Publish Annual Penalty Inflation Adjustments Notwithstanding Section 553 of the Administrative Procedures Act

Section 4 of the 2015 Act directs federal agencies to publish the second annual adjustments no later than January 15, 2018. In accordance with section 553 of the Administrative Procedures Act (APA), most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, Section 4(b)(2) of the 2015 Act provides that each agency shall make

the annual inflation adjustments "notwithstanding section 553" of the APA. According to OMB guidance issued to Federal agencies on the implementation of the 2018 annual adjustment,<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

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

### C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule merely increases the level of statutory civil penalties that can be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

### D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. Because the 2015 Act directs Federal agencies to publish this rule notwithstanding section 553 of the APA, this rule is not subject to notice and comment requirements or the RFA.

<sup>5</sup> See OMB Memorandum M-18-03 at p. 4.

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

<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.

<sup>4</sup> Office of Management and Budget Memorandum, *Implementation of the Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum M-18-03) at p. 1 (December 15, 2017).

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is required by the 2015 Act, without the exercise of any policy discretion by EPA. This action also imposes no enforceable duty on any state, local or tribal governments or the private sector. Because the calculation of any increase is formula-driven pursuant to the 2015 Act, EPA has no policy discretion to vary the amount of the adjustment.

*F. Executive Order 13132: Federalism*

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

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This rule merely reconciles the real value of current statutory civil penalty levels to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. The calculation of the increases is formula-driven and prescribed by statute, and EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, this rule will not have a substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

*H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

The rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. Rather, this action is mandated by the 2015 Act, which prescribes a formula for adjusting statutory civil penalties on an annual basis to reflect inflation.

*L. Congressional Review Act (CRA)*

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The 2015 Act directs Federal agencies to publish their annual penalty inflation adjustments “notwithstanding section 553 [of the APA].” Because OMB has instructed Federal agencies that this provision means that “notice, an opportunity for comment, and a delay in the effective date” are not required for agencies to issue regulations implementing the annual adjustment,<sup>6</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, 2018.

**E. Scott Pruitt,**  
*Administrator.*

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

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

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

**Authority:** Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104–134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Pub. L. 105–362, title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 114–74, title VII, sec. 701(b), Nov. 2, 2015, 129 Stat. 599.

■ 2. Revise § 19.2 to read as follows:

**§ 19.2 Effective date.**

The statutory penalty levels in the last column of Table 1 to § 19.4 apply to all violations which occurred after December 6, 2013 through November 2, 2015, and to violations occurring after November 2, 2015, where penalties were assessed before August 1, 2016. The statutory civil penalty levels set forth in the fourth column of Table 2 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed on or after August 1, 2016 and before January 15, 2017. The statutory civil penalty levels set forth in the fifth column of Table 2 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed after January 15, 2017 but before January 15, 2018. The statutory civil penalty levels set forth in the sixth and last column of Table 2 of § 19.4 apply to all violations which occur or occurred after November 2, 2015, where the penalties are assessed after January 15, 2018.

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

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

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

<sup>6</sup> See OMB Memorandum M–18–03 at p. 4.

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

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

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

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

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



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

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

<sup>1</sup> Note that 7 U.S.C. 1361(a)(2) contains three separate statutory maximum civil penalty provisions. The first mention of \$1,000 and the \$500 statutory maximum civil penalty amount were originally enacted in 1978 (Pub. L. 95–396), and the second mention of \$1,000 was enacted in 1972 (Pub. L. 92–516).

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

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

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

**Air Plan Approval; NC; Open Burning and Miscellaneous Revisions**

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective January 10, 2018.

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

website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](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:** Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Ward can be reached via telephone at (404) 562–9140, or via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

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

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

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

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## NOTES

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## WPS PENALTY CALCULATION WORKSHEET

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- 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.:

<b>FIFRA WPS CIVIL PENALTY CALCULATION WORKSHEET</b>	<b>Prepared by: Date:</b>			
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			\$	