

# Civil Monetary Penalty Inflation Adjustment: U.S. Environmental Protection Agency Federal Register Notice Promulgating Final Rule



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The United States Environmental Protection Agency (“EPA”) published a final rule in the December 27th Federal Register that adjusts the level of the maximum (and minimum) statutory civil monetary penalty amounts under the statutes it administers. See 88 Fed. Reg. 89309.

Examples of the federal environmental statutes administered by the EPA include:

- Clean Water Act
- Clean Air Act
- Resource Conservation and Recovery Act
- Toxic Substances Control Act
- Federal Insecticide, Fungicide, and Rodenticide Act
- Comprehensive Environmental Response, Compensation, and Liability Act
- Safe Drinking Act

The Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“2015 Act”) mandates that each federal agency adjust the statutory civil monetary penalties under the laws implemented by that agency annually to account for inflation.

Section 4 of the 2015 Act requires such federal agencies to publish these adjustments by January 15th of each year. The stated purpose of the 2015 Act is to maintain the deterrent effect of civil monetary penalties. This is intended to be accomplished by translating originally enacted statutory civil amounts to today’s dollars and rounding statutory civil penalties to the nearest dollar.

EPA states it has made seven annual adjustments since January 15, 2017. As a result, the final rule is intended to implement the eighth annual adjustment mandated by the 2015 Act.

The 2015 Act provides a formula for calculating the adjustments. Specifically, as EPA notes in the Federal Register preamble:

. . . Each statutory maximum and minimum civil monetary penalty, as currently adjusted, is multiplied by the cost-of-living adjustment multiplier, which is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2023 exceeds the CPI-U for the month of October 2022.

Note that the State of Arkansas has been delegated basically every federal environmental program. As a result, the vast majority of environmental enforcement in Arkansas is undertaken by the State of Arkansas agencies. Nevertheless, EPA retains the ability to file enforcement actions in delegated states and on occasion does so.

A copy of the Federal Register Notice can be downloaded [here](#).