

DEPARTMENT OF LABOR**Wage and Hour Division****29 CFR Parts 578, 579, and 580**

RIN 1215-AB20

Adjustment of Civil Money Penalties for Inflation

AGENCY: Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document adjusts the amount of civil money penalties that may be assessed under the Fair Labor Standards Act (FLSA) for repeated or willful violations of the minimum wage or overtime provisions of the FLSA, and for violations of the child labor provisions of the FLSA. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. Under the amended Federal Civil Penalties Inflation Adjustment Act, Federal agencies must adjust their civil money penalties for inflation pursuant to a specified formula, and make periodic adjustments thereafter to account for inflation.

EFFECTIVE DATE: The rule is effective on January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Deputy Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3510, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693-0745 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693-0023. TTY/TDD callers may dial toll-free 1-877-889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of final regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. To locate the nearest office, telephone our toll-free information and helpline at 1-866-4USWAGE (1-866-487-9243) between 8 am and 5 pm in your local time zone, or log onto the Wage and Hour Division's website for a nationwide listing of Wage and Hour District and Area Offices at: <http://www.dol.gov/dol/esa/public/contacts/whd/america2.htm>.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains no new information collection requirements which are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

II. Background

The Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890) to require Federal agencies to regularly adjust certain civil money penalties (CMPs) for inflation. As amended, the law requires each agency to initially adjust for inflation all covered civil money penalties, and to make further inflationary adjustments every four years thereafter. The adjustment prescribed in the amended Act is based on a cost-of living formula according to the amount that the Department of Labor's Consumer Price Index (CPI) for all urban consumers for June of the calendar year before the adjustment exceeds the June CPI for the calendar year that the CMP amount was last set or adjusted. The statute provides for rounding the penalty increases. Once the percentage change in the CPI is calculated, the amount of the adjustment is rounded according to a table in the Federal Civil Penalties Inflation Adjustment Act, which is scaled based on the dollar amount of the current penalty. The statute applies a cap that limits the amount of the first increase in penalty to 10 percent of the current penalty amount (for the *initial* adjustment only). Any increase under the Act applies prospectively to violations that occur after the date the increase takes effect.

Section 16(e) of the FLSA authorizes CMP assessments for the following violations: (1) Any person who violates the child labor provisions (section 12 or section 13(c)(5)) of the FLSA or any regulation thereunder may be subject to a CMP not to exceed \$10,000 for each employee who was the subject of such a violation; and (2) any person who repeatedly or willfully violates the minimum wage (section 6) or overtime provisions (section 7) of the FLSA may be subject to a CMP not to exceed \$1,000 for each such violation. In determining the amount of any such penalty in a particular case for either type of violation, the size of the business of the person charged and the gravity of the violation must be taken into consideration, among other appropriate factors.

The child labor CMP amount was last adjusted by the Congress in 1990 pursuant to the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 (November 5, 1990), which raised the former \$1,000 maximum child labor CMP amount to \$10,000 and directed that the amounts be deposited into the general fund of the U.S. Treasury. The \$1,000 CMP amount for repeated and willful violations of the minimum wage and overtime provisions was established by the Congress under the 1989 FLSA Amendments, Public Law 101-157 (November 17, 1989). Due to inflation since these CMP amounts were last set in law or adjusted by the Congress, the first increase is limited to the maximum 10 percent cap initially permitted under the Debt Collection Improvement Act amendments to the Federal Civil Penalties Inflation Adjustment Act. The adjusted CMP amounts will apply only to violations occurring after the revised regulations become effective.

On December 28, 1998, the Department of Labor published a proposal in the **Federal Register** (63 FR 71405) to amend affected sections of parts 578 and 579 of Title 29 of the Code of Federal Regulations to increase the specified CMP amounts as described above. No comments were received on the proposal. Accordingly, the proposal is being adopted as a final rule.

III. Summary of Rule

The \$1,000 maximum penalty amount in Section 578.3 for repeated or willful violations of the minimum wage or overtime requirements of the FLSA is increased to \$1,100. The \$10,000 maximum penalty amount in Section 579.5 for violations of the child labor provisions of the FLSA is increased to \$11,000. Conforming changes are also made in other affected sections of the regulations to discuss the inflationary adjustment provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

In addition, the following technical amendments are made to correct two typographical errors in parts 579 and 580. In Section 579.5(e) of part 579, the reference to “§ 579.6” is corrected to read “§ 580.6”. In Section 580.5 of part 580, the reference to “§ 580.19” is corrected to read “§ 580.18”.

Executive Order 12866 and Significant Regulatory Actions

This rule is not a “significant regulatory action” within the meaning of Executive Order 12866. The rule will adjust for inflation the maximum civil money penalties under Section 16(e) of

the Fair Labor Standards Act. The adjustments and the formula for determining the amount of the adjustment were mandated by the Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. Thus, the Congress has required that the Department promulgate the amendments to this rule, and provided no discretion to the Department regarding the substance of the amendments. Moreover, for the three-year period prior to the proposed rule, the Department collected a total of \$6,169,771 in CMPs for repeated or willful minimum wage or overtime violations that were assessed in 1,157 cases, for an average of \$2,056,590 collected per year (less than \$5,333 per case, on average). Over the same three-year period, the Department collected a total of \$12,496,180 in CMPs for child labor violations that were assessed in 3,772 cases, for an average of \$4,165,393 collected per year (approximately \$3,314 per case, on average). With the initial increase in the maximum CMP limited to the statutory 10 percent cap, the total economic impact of the proposal was estimated at less than \$623,000 per year. CMPs for the three most recent years are comparable in amounts. Thus, this action will not: (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 Executive Order 12866. Therefore, no regulatory impact analysis was required or prepared.

Section 202 of the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, “* * * (other than to the extent that such regulations incorporate requirements specifically set forth in law).” For purposes of the Unfunded Mandates Reform Act, this rule includes only requirements that are

specifically set forth in law pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. In addition, the rule will not result in increased annual expenditures in excess of \$100 million by State, local or tribal governments in the aggregate, or by the private sector.

Executive Order 13132

This rule does not have “substantial direct effects 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” under the terms of Executive Order 13132 regarding federalism. Therefore, under section 6 of that Order, we have determined that the rule does not have sufficient federalism implications to require consultations or a federalism summary impact statement.

Regulatory Flexibility Analysis

This rule will not have a significant economic impact on a substantial number of small entities. The rule does no more than ministerially increase certain statutory CMPs to account for inflation, pursuant to specific directions of the Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. Provisions of law specify the procedures for calculating the inflation adjustments and do not allow variations in the calculations to minimize the effects on small entities. Nevertheless, in each case the amount of the penalty assessed under Section 16(e) of the FLSA must take into consideration the size of the business of the person charged with the violations, which will further mitigate the ultimate effects of the rule on small businesses. Moreover, only persons who have willfully or repeatedly violated the minimum wage or overtime provisions of the FLSA, or violated the child labor requirements of the FLSA, will be affected by this rule. Based on the average CMP amounts collected for these types of violations over a three-year period as discussed above, we estimate that the effect of the rule will be to increase the average CMP collected for repeated or willful minimum wage or overtime violations by \$533 per case, and increase the average CMP collected for child labor violations by \$331 per case. Accordingly, the Department determined that this rule will not have a significant economic impact on a substantial number of small entities. The Department certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration

when the proposed rule was published. Therefore, no Regulatory Flexibility Analysis was required. No comments were received on any aspect of the rule or these conclusions as set forth in the proposed rule.

Small Business Regulatory Enforcement Fairness Act

This rule is not a “major rule” under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effects on Families

This rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, 1999, for its effect on family well-being and we hereby certify that the rule will not adversely affect the well-being of families.

List of Subjects

29 CFR Part 578

Employment, Labor, Law enforcement, Penalties.

29 CFR Part 579

Child labor, Law enforcement, Penalties.

29 CFR Part 580

Administrative practice and procedure, Child labor, Employment, Labor, Law enforcement, Penalties.

Signed at Washington, DC, on this 30th day of November, 2001.

Annabelle T. Lockhart,

Acting Administrator, Wage and Hour Division.

For the reasons set forth above, 29 CFR parts 578, 579, and 580 are amended as set forth below.

PART 578—MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

1. The authority citation for part 578 is revised to read as follows:

Authority: Sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29 (29 U.S.C. 216(e)), Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as

amended by Pub. L. 104-134, section 31001(s), 110 Stat. 1321-358, 1321-373.

2. Section 578.1 is revised to read as follows:

§ 578.1 What does this part cover?

Section 9 of the Fair Labor Standards Amendments of 1989 amended section 16(e) of the Act to provide that any person who repeatedly or willfully violates the minimum wage (section 6) or overtime provisions (section 7) of the Act shall be subject to a civil money penalty not to exceed \$1,000 for each such violation. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001(s)), requires that inflationary adjustments be periodically made in these civil money penalties according to a specified cost-of-living formula. This part defines terms necessary for administration of the civil money penalty provisions, describes the violations for which a penalty may be imposed, and describes criteria for determining the amount of penalty to be assessed. The procedural requirements for assessing and contesting such penalties are contained in 29 CFR part 580.

3. The section heading and paragraph (a) of § 578.3 are revised to read as follows:

§ 578.3 What types of violations may result in a penalty being assessed?

(a) A penalty of up to \$1,000 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act; Provided, however, that for any violation occurring on or after January 7, 2002 the civil money penalty amount will increase to up to \$1,100. The amount of the penalty will be determined by applying the criteria in § 578.4.

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PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

4. The authority citation for part 579 is revised to read as follows:

Authority: 29 U.S.C. 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4-2001, 66 FR 29656; Sec. 3103, Pub. L. 101-508; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by Pub. L. 104-134, section 31001(s), 110 Stat. 1321-358, 1321-373.

5. The section heading of Section 579.1 is revised, paragraph (b) of § 579.1

is redesignated as paragraph (c) of that section, and a new paragraph (b) is added, to read as follows:

§ 579.1 What does this part cover?

* * * * *

(b) The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001(s)), requires that Federal agencies periodically adjust their civil money penalties for inflation according to a specified cost-of-living formula. This law requires each agency to make an initial inflationary adjustment for all covered civil money penalties, and to make further inflationary adjustments at least once every four years thereafter. Any increase in the civil money penalty amount will apply only to violations that occur after the date the increase takes effect.

* * * * *

6. In § 579.5:

a. The section heading and paragraph (a) are revised; and

b. In paragraph (e), the reference to “§ 579.6” is revised to read “§ 580.6”.

The revisions read as follows:

§ 579.5 How is the amount of the penalty determined?

(a) The administrative determination of the amount of the civil penalty, of not to exceed \$10,000 for each employee who was the subject of a violation of section 12 or section 13(c)(5) of the Act relating to child labor or of any regulation issued under that section, will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the gravity of the violation as provided in paragraphs (b) through (d) of this section; Provided, however, that for any violation occurring on or after January 7, 2002 the civil money penalty amount will increase to not to exceed \$11,000 for each employee who was the subject of a violation.

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§ 579.9 [Removed]

7. Section 579.9 is removed.

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

8. The Authority citation for part 580 is revised to read as follows:

Authority: 29 U.S.C. 9a, 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4-2001, 66 FR

29656; 5 U.S.C. 500, 503, 551, 559; sec. 9, Pub. L. 101-157, 103 Stat. 938; sec. 3103, Pub. L. 101-508.

§ 580.5 [Amended]

9. In § 580.5, the reference to “§ 580.19” is revised to read “§ 580.18”.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA065-Pt 70; FRL-7113-5]

Clean Air Act Full Approval of 34 Operating Permits Programs in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to fully approve the operating permits programs submitted by the California Air Resources Board (CARB) on behalf of the following 34 air districts: Amador County Air Pollution Control District (APCD), Bay Area Air Quality Management District (AQMD), Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD. These programs were submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. On the dates listed in Table 1 below, EPA granted interim approval to the 34 operating permits programs. All 34 air districts revised their programs to satisfy the conditions of the interim approval, and EPA proposed full approval in the **Federal Register** on