

Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 6, 1996.

#### Regulatory Process

##### Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### Small Businesses

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

##### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 17, 1996.

Felicia Marcus,

*Regional Administrator.*

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

##### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(191)(i)(D), (c)(196)(i)(C)(3), (c)(229)(i)(A), and (c)(231)(i)(B) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(191) \* \* \*

(i) \* \* \*

(D) Kern County Air Pollution Control District.

(I) Rule 412.1, adopted on November 9, 1992.

\* \* \* \* \*

(196) \* \* \*

(i) \* \* \*

(C) \* \* \*

(3) Rule 343, adopted on December 14, 1993.

\* \* \* \* \*

(229) New and amended regulations for the following APCDs were submitted on January 31, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(I) Rule 461, adopted on September 8, 1995.

\* \* \* \* \*

(231) \* \* \*

(i) \* \* \*

(B) Kern County Air Pollution Control District.

(I) Rule 102 and Rule 410.3, adopted on March 7, 1996.

\* \* \* \* \*

[FR Doc. 96-25467 Filed 10-4-96; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

#### 42 CFR Part 1003

#### 45 CFR Part 79

#### RIN 0991-AA

### Medicare and State Health Care Programs and Program Fraud Civil Remedies: Fraud and Abuse; Civil Money Penalties Inflation Adjustments

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Final rule.

**SUMMARY:** In accordance with Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, this final rule incorporates the penalty inflation adjustments for the civil money penalties for health care fraud and abuse. These inflation adjustment calculations are not applicable to those civil money penalties contained in the Social Security Act, which are exempted from this adjustment.

**EFFECTIVE DATE:** This rule is effective on November 6, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Joel J. Schaer, Office of Management and Policy, (202) 619-0089.

#### SUPPLEMENTARY INFORMATION:

##### I. The Debt Collection Improvement Act of 1996

In an effort to maintain the remedial impact of civil money penalties (MPs) and promote compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101-410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every four years thereafter for these penalty amounts.

The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (i) should apply only to the violations that occur after October 23, 1996—the Act's effective date—and (ii) should not exceed 10 percent of the penalty indicated. In addition to those penalties that fall under the Internal Revenue Code of 1986, the Tariff Act of 1930 and the Occupational Safety and Health Act of 1970, CMPs that come under the Social Security Act are specifically exempt from the requirements of this Act.

##### Method of calculation

Under the Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum CMP amount per violation by the cost-of-living adjustment. The "cost-of-living" adjustment is defined as the percentage of each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year in which the amount of the CMP was last set or adjusted in accordance with the law. Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Act.

##### II. OIG Civil Money Penalties Affected by this Adjustment

While the vast majority of penalty sanctions delegated to the OIG derive from CMP authorities set forth under the Social Security Act, and therefore are exempt from these inflation adjustment calculations, there are several penalty authorities, within our jurisdiction, as described below, for which adjustments are required and are now being made.

##### *The Health Care Quality Improvement Act of 1986*

In 1986, sections 421(c) and 427(b)(2) of the Health Care Quality Improvement Act (HCQIA) of 1986 (Title IV of Pub. L. 99-660) established OIG CMP authorities for failure to report medical malpractice payment information to the National Practitioner Data Bank, and for breaching the confidentiality of information reported to the Data Bank established to collect and disseminate such information. To assure the timely collection and reporting of medical malpractice payments to the Data Bank, the final regulations—published in the Federal Register (56 FR 28492, June 21, 1991) and codified at 42 CFR part 1003—set forth a CMP of up to 410,000 against any person or entity that fails to report each such payment in a timely and complete manner.

In addition, to protect the confidentiality of information reported to the Data Bank under these provisions, the final regulations also established a CMP of up to \$10,000 against any person or entity who improperly discloses information reported to the Data Bank.

Based on the penalty amount inflation factor calculation, derived from dividing the June 1995 CPI by the CPI from June 1986, after rounding and the 10 percent maximum ceiling, we are adjusting the maximum penalty amount for the two CMPs under the HCQIA to \$11,000 per violation.

##### *The Program Fraud Civil Remedies Act of 1986*

In 1986, sections 6103 and 6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-501) set forth the Program Fraud Civil Remedies Act (PFCRA) of 1986. Specifically, this authority established a CMP and an assessment against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim or statement to the Department. The Department's regulations—published in the Federal Register (53 FR 11656, April 8, 1988) and codified at 45 CFR part 79—set forth a CMP of up to \$5,000 for each false claim or statement made to the Department.

Based on the penalty amount inflation factor calculation, derived from dividing the June 1995 CPI by the CPI from June 1986, after rounding and the 10 percent maximum ceiling, we are adjusting the maximum penalty amount for this CMP to \$5,500 per violation.

##### III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed

rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports and is consistent with the statutory authority set forth in the Debt Collection Improvement Act of 1996, with no issues of policy discretion. Accordingly, we believe that opportunity for prior comment is unnecessary and contrary to the public interest, and are issuing these revised regulations as a final rule that will apply to all future cases under this authority.

##### IV. Regulatory Impact Statement

###### *Executive Order 12866*

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866, and has determined that it does not meet the criteria for a significant regulatory action. As indicated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Debt Collection Improvement Act of 1996 for specific applicable civil money penalties under the authority of the OIG. The great majority of individuals, organizations and entities addressed through these regulations do not engage in such prohibited activities and practices, and as a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited behavior in violation of the statutes. As such, this final rule and the inflation adjustment contained therein should have no effect on Federal or State expenditures.

###### *Regulatory Flexibility Act*

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601-612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While some penalties may have an impact on small entities, it is the nature

of the violation and not the size of the entity that will result in an action by the OIG, and the aggregate economic impact of this rulemaking on small business entities should be minimal, affecting only those few who have chosen to engage in prohibited arrangements and schemes in violation of statutory intent. Therefore, we have concluded, and the Secretary certifies, that this final rule will not have a significant economic impact on a number of small business entities, and that a regulatory flexibility analysis is not required for this rulemaking.

#### *Paperwork Reduction Act*

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

#### List of Subjects

##### *42 CFR Part 1003*

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

##### *45 CFR Part 79*

Administrative practice and procedure, Fraud, Investigations, Organizations and functions, (Governmental agencies), Penalties.

Accordingly, 42 CFR part 1003 and 45 CFR part 79 are amended as set forth below:

#### **A. TITLE 42—PUBLIC HEALTH**

##### **CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE; DEPARTMENT OF HEALTH AND HUMAN SERVICES**

42 CFR part 1003 is amended as set forth below:

##### **PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS**

1. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a-7, 1230a-7a, 1320b-10, 1395u(j), 1395u(k), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.103 is amended by revising paragraph (c) to read as follows:

##### **§ 1003.103 Amount of penalty.**

\* \* \* \* \*

(c) The OIG may impose a penalty of not more than \$11,000<sup>1</sup> for each payment for which there was a failure to report required information in

accordance with § 1003.102(b)(5), or for each improper disclosure, use or access to information that is subject to a determination under § 1003.102(b)(6).

\* \* \* \* \*

#### **B. TITLE 45—PUBLIC WELFARE**

##### **Subtitle A—Department of Health and Human Services, General Administration**

45 CFR part 79 is amended as set forth below:

##### **PART 79—PROGRAM FRAUD CIVIL REMEDIES**

1. The authority citation for part 79 is revised to read as follows:

Authority: 31 U.S.C. 3801–3812.

2. Section 79.3 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

##### **§ 79.3 Basis for civil penalties and assessments.**

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

(i) Is false, fictitious, or fraudulent;

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

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

(A) Omits a material fact;

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

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

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

\* \* \* \* \*

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

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

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

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

(ii) Contains, or is accompanied by, an express certification or affirmation of

the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,500<sup>2</sup> for each such statement.

\* \* \* \* \*

Dated: September 11, 1996.

June Gibbs Brown,

*Inspector General.*

Approved: September 17, 1996.

Donna E. Shalala,

*Secretary.*

[FR Doc. 96–25256 Filed 10–4–96; 8:45 a.m.]

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#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Parts 2, 25 and 90**

[ET Docket No. 96–20; FCC 96–377]

##### **Fixed Satellite Service 13.75 to 14.0 GHz Band**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has allocated the 13.75–14.0 GHz band to the fixed-satellite service (“FSS”) on a co-primary basis for Earth-to-space (“uplink”) transmissions and has made conforming revisions to the associated service rules in Parts 25 and 90. The Commission found a growing demand for FSS in the Ku-band portion of the spectrum and concluded that this allocation will further the competitiveness of U.S. satellite operators in domestic and international markets and will provide more open and competitive markets for consumers. Further the allocation will permit added flexibility to FSS operators in the design of their systems by facilitating the co-location of additional satellites that use different frequency bands. The Commission believes that this allocation will complement and allow for greater use of the existing FSS downlink spectrum allocation.

**EFFECTIVE DATE:** November 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** Tom Mooring, Office of Engineering and Technology, (202) 418–2450.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Report and Order*, ET Docket No. 96–20, FCC 96–377, adopted September 12, 1996,

<sup>1</sup> As adjusted in accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101–140), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

<sup>1</sup> As adjusted in accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101–140), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

<sup>2</sup> As adjusted in accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101–140), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).