

Employees (subpart A of 29 CFR part 2602) by removing all provisions other than those dealing with outside employment. These outside employment provisions, which are now codified at 29 CFR part 4904, have been superseded by OGE's government-wide regulations. Accordingly, the PBGC is removing part 4904 from its regulations.

Because this rule involves agency management and personnel (5 U.S.C. 553(a)(2)), general notice of proposed rulemaking and a delayed effective date are not required (5 U.S.C. 553(b), (d)).

Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply (5 U.S.C. 601(2)).

#### List of Subjects in 29 CFR Part 4904

Conflict of interests, Government employees, Penalties, Political activities (Government employees), Production and disclosure of information, Testimony.

■ For the reasons set forth above, 29 CFR chapter XL is amended as follows:

#### PART 4904—ETHICAL CONDUCT OF EMPLOYEES

■ 1. The authority citation for part 4904 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469; 5 CFR 735.104.

#### PART 4904—[REMOVED]

■ 2. Part 4904 is removed.

Issued in Washington, DC this 10th day of February, 2004.

**Steven A. Kandarian,**

*Executive Director, Pension Benefit Guaranty Corporation.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 19 and 27

[FRL-7623-5]

#### Civil Monetary Penalty Inflation Adjustment Rule

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency ("EPA") is issuing this final Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996, to adjust EPA's civil monetary penalties ("CMPs") for inflation on a periodic basis. The Agency is required

to review its penalties at least once every four years and to adjust them as necessary for inflation according to a formula specified in the statute. A complete version of Table 1 from the regulatory text, which lists all of the EPA's civil monetary penalty authorities, appears near the end of this rule.

**EFFECTIVE DATE:** March 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** David Abdalla, Office of Regulatory Enforcement, Special Litigation and Projects Division, Mail Code 2248A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564-2413.

#### SUPPLEMENTARY INFORMATION:

##### Background

Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 note, ("DCIA"), each federal agency is required to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to such agency's statutes. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to further the policy goals of the laws. The DCIA requires adjustments to be made at least once every four years following the initial adjustment. The EPA's initial adjustment to each CMP was published in the **Federal Register** on December 31, 1996, at (61 FR 69360) and became effective on January 30, 1997.

This rule adjusts the amount for each type of CMP that EPA has jurisdiction to impose in accordance with these statutory requirements. It does so by revising the table contained in 40 CFR 19.4. The table identifies the statutes that provide EPA with CMP authority and sets out the inflation-adjusted maximum penalty that EPA may impose pursuant to each statutory provision. This rule also revises the effective date provisions of 40 CFR 19.2 to make the penalty amounts set forth in 40 CFR 19.4 apply to all applicable violations that occur after the effective date of this rule.

The DCIA requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. The DCIA defines the Consumer Price Index as the Consumer Price Index for all urban consumers published by the Department of Labor ("CPI-U"). As the initial adjustment was made and published on

December 31, 1996, the inflation adjustment for the CMPs set forth in this rule was calculated by comparing the CPI-U for June 1996 (156.7) with the CPI-U for June 2003 (183.7), resulting in an inflation adjustment of 17.23 percent. In addition, the DCIA's rounding rules require that an increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000.

The amount of each CMP was multiplied by 17.23 percent (the inflation adjustment) and the resulting increase amount was rounded up or down according to the rounding requirements of the statute. Certain CMPs were adjusted for the first time and were increased by only 10 percent without being subject to the rounding procedures as required by the DCIA. The table below shows the inflation-adjusted CMPs and includes only the CMPs as of the effective date of this rule. EPA intends to readjust these amounts in the year 2008 and every four years thereafter, assuming there are no further changes to the mandate imposed by the DCIA.

On June 18, 2002, the EPA published a direct final rule and a parallel proposed rule in the **Federal Register** (67 FR 41343). The direct final rule would have amended the Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the DCIA, to adjust EPA's civil monetary penalties for inflation. EPA stated in the direct final rule that if we received adverse comment by July 18, 2002, EPA would publish a timely notice of withdrawal on or before the August 19, 2002 effective date, and then address that comment in a subsequent final action based on the parallel proposal published at (67 FR 41363). EPA subsequently received one adverse comment on the direct final rule from the General Accounting Office ("GAO"), which asserted that EPA had misinterpreted the rounding formula provided in the DCIA. Accordingly, EPA withdrew the direct final rule on August 19, 2002 (67 FR 53743).

The formula for the amount of the penalty adjustment is prescribed by Congress in the DCIA and these changes are not subject to the exercise of discretion by EPA. However the

rounding requirement of the statute is subject to different interpretations. Some agencies rounded the increase based on the amount of the current penalty before adjustment, while other agencies have rounded the increase based on the amount of the increase resulting from the CPI percentage calculation. Still other agencies first added the CPI increase to the amount of the current penalty and then rounded the total based on the amount of the increased penalty. The penalties in EPA's direct final rule were rounded based on the amount of the increase resulting from the CPI percentage increase because this approach appears to achieve the intent of the DCIA by steadily tracking the CPI over time. However, the GAO's adverse comment asserts that a strict reading of the DCIA requires rounding the CPI increase based on the amount of the current penalty before adjustment.

On July 3, 2003, EPA published a proposed rule that appeared in the **Federal Register** at (68 FR 39882), entitled "Civil Monetary Penalty Inflation Adjustment Rule," as mandated by the Debt Collection Improvement Act of 1996, to adjust EPA's civil monetary penalties for inflation on a periodic basis. EPA subsequently published a technical correction in the **Federal Register** on August 4, 2003 at (68 FR 45788) to correct errors in the language of the proposal that mistakenly referred to the proposed effective date as July 3, 2003. EPA proposed to adopt GAO's interpretation of the DCIA rounding rules and, thus, proposed to round the CPI increases in the proposed rule based on the amount of the current penalty before adjustment.

In accordance with the DCIA, EPA's proposed rule used the CPI-U from June 2002 to calculate the penalty adjustments. EPA also stated in the proposal that it intends to use this formula for calculating future adjustments to the CMPs and will not provide additional comment periods at the time future adjustments are made. EPA received comments on the proposed rule from two commenters.

One commenter supported the "greatest legal increase possible" to discourage polluters from treating the fines as just a "cost of doing business." This final rule enables EPA to impose the maximum fines provided under the law, but is not intended to address when a maximum fine is appropriate. Instead, EPA makes that decision on a case-by-case basis, and considers numerous factors in determining the appropriate penalty in each case, including the gravity of the violation

and the extent to which the violator gained an economic benefit as a result of violating the law.

Another commenter argued that any ambiguity in the rounding requirement of the statute was due to a "scrivener's error." This commenter supported an interpretation that penalties be rounded based on the amount of the increase resulting from the CPI adjustment, rather than the amount of the penalty. However, we determined after carefully considering GAO's comment and examining the practices of other agencies, that following the plain meaning of the statutory language is appropriate. As GAO's adverse comment states "[n]othing in the plain language of the statute, nor the legislative history, permits an agency to use the size of the increase to determine the appropriate category of rounding." This commenter also noted that EPA had not published this second round of adjustments within four years of the initial adjustments as set forth in the statute. EPA's earlier direct final rulemaking was delayed due to EPA's need to analyze and reconcile the potential ambiguities arising from the statutory language including review of other agencies rulemakings under DCIA and discussions with other agencies regarding their approaches to interpreting the DCIA. Prior to GAO's involvement in the process, no federal agency had assumed a leadership in providing guidance on how the DCIA rounding rule should be implemented. Since the time that GAO became involved in the process, including the submission of its adverse comment on EPA's direct final rule, EPA has worked with GAO and other agencies to resolve the appropriate interpretation of the statutory language. Finally, the commenter also suggested that all of the penalties should be adjusted from their original base and not their adjusted base. The statute does not provide for a return to the original base penalty in calculating the adjustment but provides that the adjustment "shall be determined by increasing the maximum civil penalty \* \* \* by the cost-of-living adjustment."

As discussed above, EPA's proposed rule used the CPI-U from June 2002 because EPA proposed the rule in 2003. However, since EPA is issuing the final rule in 2004 and DCIA requires EPA to use the CPI-U for June of the calendar year preceding the adjustment, the penalty adjustments in this final rule use the CPI-U for June 2003 which result in an inflation adjustment of 17.23 percent rather than the 14.8 percent adjustment in the proposed rule. Thus, to derive the CMPs for this

final rule, the amount of each CMP was multiplied by 17.23 percent and the resulting increase was rounded according to the rounding rules of DCIA as EPA proposed and is adopting in this final rule. As a result of using the June 2003 CPI-U, some of the adjusted CMPs in this final rule are different than those in the July 2003 proposed rule. However, this difference results solely from the requirement in DCIA to use the June 2003 CPI-U and application of the same rounding rules that EPA proposed in July 2003.

Under 5 U.S.C. 553(b)(B), EPA finds that there is good cause to promulgate this rule without providing for further public comment even though the rule uses a CPI-U value different than the CPI-U value used in the proposal. EPA already provided an opportunity for public comment on the rounding rules that EPA has used in this final rule and the DCIA requires that an agency use the CPI-U from June of the year prior to the adjustment. Therefore, further public comment is unnecessary because EPA has no discretion to do other than to use the June 2003 CPI-U.

#### Statutory and Executive Order Review

##### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, [58 FR 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to review by the Office of Management and Budget.

### *Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Burden means the total time, effort, financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business as defined in the Small Business Administration regulations at 13 CFR Part 121; (2) a small governmental jurisdiction that is a government of a city, county, town school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA is required by the DCIA to adjust

civil monetary penalties for inflation. The formula for the amount of the penalty adjustment is prescribed by Congress and is not subject to the exercise of discretion by EPA. EPA's action implements this statutory mandate and does not substantively alter the existing regulatory framework. This rule does not affect mechanisms already in place, including statutory provisions and EPA policies, that address the special circumstances of small entities when assessing penalties in enforcement actions.

Although this rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Small entities may be affected by this rule only if the federal government finds them in violation and seeks monetary penalties. EPA's media penalty policies generally take into account an entity's "ability to pay" in determining the amount of a penalty. Additionally, the final amount of any civil penalty assessed against a violator remains committed to the discretion of the federal judge or administrative law judge hearing a particular case.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a

small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector because the rule implements mandate(s) specifically and explicitly set forth by the Congress without the exercise of any policy discretion by EPA. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

### *Executive Order 13132: Federalism*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." This rule does not have federalism implications. It will 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, as specified in executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." As this rule will not have substantial direct effects 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, Executive Order 13175 does not apply to this rule.

*Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. Because this action does not involve technical standards, EPA did not consider the use of any voluntary consensus standards under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

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

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer Advancement Act

of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. Because this action does not involve technical standards, EPA did not consider the use of any voluntary consensus standards under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

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

This action does not require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

*Congressional Review Act*

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects**

*40 CFR Part 19*

Environmental protection, Administrative practice and procedure, Penalties.

*40 CFR Part 27*

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

Dated: February 8, 2004.

**Michael O. Leavitt,**

*Administrator, Environmental Protection Agency.*

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

■ 1. Revise part 19 to read as follows:

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

Sec.

19.1 Applicability.

19.2 Effective Date.

19.3 [Reserved].

19.4 Penalty Adjustment and Table.

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

**§ 19.1 Applicability.**

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

**§ 19.2 Effective Date.**

The increased penalty amounts set forth in this part apply to all violations under the applicable statutes and regulations which occur after March 15, 2004.

**§ 19.3 [Reserved].**

**§ 19.4 Penalty Adjustment and Table.**

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

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

| U.S. code citation                | Civil monetary penalty description   | Penalties effective between January 30, 1997 and March 15, 2004 | New maximum penalty amount                     |
|-----------------------------------|--|---|--|
| 7 U.S.C. 136l.(a)(1) .....        | FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC.                             | \$5,500 .....   | \$6,500  |
| 7 U.S.C. 136l.(a)(2) .....        | FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—FIRST AND SUBSEQUENT OFFENSES OR VIOLATIONS. | \$550/\$1000 .....  | \$650/\$1,200                                  |
| 15 U.S.C. 2615(a) .....           | TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY .....   | \$27,500 .....  | \$32,500                                       |
| 15 U.S.C. 2647(a) .....           | ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY .....   | \$5,500 .....   | \$6,500  |
| 15 U.S.C. 2647(g) .....           | ASBESTOS HAZARD EMERGENCY RESPONSE ACT—CONTRACTOR VIOLATIONS.  | \$5000 .....  | \$5,500  |
| 31 U.S.C. 3802(a)(1) .....        | PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM.  | \$5,500 .....   | \$6,500  |
| 31 U.S.C. 3802(a)(2) .....        | PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.  | \$5,500 .....   | \$6,500  |
| 33 U.S.C. 1319(d) .....           | CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY .....   | \$27,500 .....  | \$32,500                                       |
| 33 U.S.C. 1319(g)(2)(A) .....     | CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.  | \$11,000/\$27,500   | \$11,000/\$32,500                              |
| 33 U.S.C. 1319(g)(2)(B) .....     | CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.  | \$11,000/<br>\$137,500.   | \$11,000/<br>\$157,500                         |
| 33 U.S.C. 1321(b)(6)(B)(I) .....  | CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.  | \$11,000/\$27,500   | \$11,000/\$32,500                              |
| 33 U.S.C. 1321(b)(6)(B)(ii) ..... | CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.  | \$11,000/<br>\$137,500.   | \$11,000/<br>\$157,500                         |
| 33 U.S.C. 1321(b)(7)(A) .....     | CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.                   | \$27,500 or<br>\$1,100 per<br>barrel or unit.                   | \$32,500 or<br>\$1,100 per<br>barrell or unit  |
| 33 U.S.C. 1321(b)(7)(B) .....     | CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(c)&(e)(1)(B).  | \$27,500 .....  | \$32,500                                       |
| 33 U.S.C. 1321(b)(7)(C) .....     | CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(j).  | \$27,500 .....  | \$32,500                                       |
| 33 U.S.C. 1321(b)(7)(D) .....     | CLEAN WATER ACT VIOLATION/MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.                      | \$110,000 or<br>\$3,300 per<br>barrel or unit.                  | \$130,000 or<br>\$4,300 per<br>barrel or unit. |
| 33 U.S.C. 1414b(d) .....          | MARINE PROTECTION, RESEARCH & SANCTUARIES ACT VIOL SEC 104b(d).  | \$660 .....   | \$760  |
| 33 U.S.C. 1415(a) .....           | MARINE PROTECTION RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST & SUBSEQUENT VIOLATIONS.   | \$55,000/<br>\$137,500.   | \$65,000/<br>\$157,500                         |
| 42 U.S.C. 300g-3(b) .....         | SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(b).   | \$27,500 .....  | \$32,500                                       |
| 42 U.S.C. 300g-3(c) .....         | SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(c).   | \$27,500 .....  | \$32,500                                       |
| 42 U.S.C. 300g-3(g)(3)(A) .....   | SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(g)(3)(a).   | \$27,500 .....  | \$32,500                                       |
| 42 U.S.C. 300g-3(g)(3)(B) .....   | SAFE DRINKING WATER ACT/ MAXIMUM ADMINISTRATIVE PENALTIES PER SEC 1414(g)(3)(B).   | \$5,000/\$25,000  | \$6,000/\$27,500                               |
| 42 U.S.C. 300g-3(g)(3)(C) .....   | SAFE DRINKING WATER ACT/THRESHOLD REQUIRING CIVIL JUDICIAL ACTION PER SEC 1414(g)(3)(C).   | \$25,000 .....  | \$27,500                                       |
| 42 U.S.C. 300h-2(b)(1) .....      | SDWA/CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL (UIC).  | \$27,500 .....  | \$32,500                                       |
| 42 U.S.C. 300h-2(c)(1) .....      | SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.   | \$11,000/<br>\$137,500.   | \$11,000/<br>\$157,500                         |
| 42 U.S.C.300h-2(c)(2) .....       | SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.   | \$5,500/\$137,500   | \$6,500/\$157,500                              |
| 42 U.S.C. 300h-3(c)(1) .....      | SDWA/VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.  | \$5,500 .....   | \$6,500  |
| 42 U.S.C. 300h-3(c)(2) .....      | SDWA/WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.  | \$11,000 .....  | \$11,000                                       |
| 42 U.S.C. 300i(b) .....           | SDWA/FAILURE TO COMPLY WITH IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER.   | \$15,000 .....  | \$16,500                                       |
| 42 U.S.C. 300i-1(c) .....         | SDWA/ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.   | \$22,000/\$55,000   | \$100,000/<br>\$1,000,000                      |
| 42 U.S.C. 300j(e)(2) .....        | SDWA/FAILURE TO COMPLY W/ORDER ISSUED UNDER SEC. 1441(c)(1).   | \$2,750 .....   | \$2,750  |
| 42 U.S.C. 300j-4(c) .....         | SDWA/REFUSAL TO COMPLY WITH REQS. OF SEC. 1445(a) OR (b) .....   | \$27,500 .....  | \$32,500                                       |
| 42 U.S.C. 300j-6(b)(2) .....      | SDWA/FAILURE TO COMPLY WITH ADMIN. ORDER ISSUED TO FEDERAL FACILITY.   | \$25,000 .....  | \$27,500                                       |
| 42 U.S.C. 300j-23(d) .....        | SDWA/VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE.  | \$5,500/\$55,000  | \$6,500/\$65,000                               |

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

| U.S. code citation                 | Civil monetary penalty description   | Penalties effective between January 30, 1997 and March 15, 2004 | New maximum penalty amount |
|------------------------------------|--|---|----------------------------|
| 42 U.S.C. 4852d(b)(5) .....        | RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992, SEC 1018—CIVIL PENALTY.   | \$11,000 .....  | \$11,000                   |
| 42 U.S.C. 4910(a)(2) .....         | NOISE CONTROL ACT OF 1972—CIVIL PENALTY .....  | \$11,000 .....  | \$11,000                   |
| 42 U.S.C. 6928(a)(3) .....         | RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.  | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 6928(c) .....            | RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.   | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 6928(g) .....            | RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C.   | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 6928(h)(2) .....         | RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER.  | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 6934(e) .....            | RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER.   | \$5,500 .....   | \$6,500                    |
| 42 U.S.C. 6973(b) .....            | RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER .....   | \$5,500 .....   | \$6,500                    |
| 42 U.S.C. 6991e(a)(3) .....        | RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMINISTRATIVE ORDER.   | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 6991e(d)(1) .....        | RES. CONS. & REC. ACT/FAILURE TO NOTIFY OR FOR SUBMITTING FALSE INFORMATION.   | \$11,000 .....  | \$11,000                   |
| 42 U.S.C. 6991e(d)(2) .....        | RCRA/VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS.  | \$11,000 .....  | \$11,000                   |
| 42 U.S.C. 14304(a)(1) .....        | BATTERY ACT VIOLATIONS .....   | \$10,000 .....  | \$11,000                   |
| 42 U.S.C. 14304(g) .....           | BATTERY ACT/VIOLATIONS OF CORRECTIVE ACTION ORDERS .....   | \$10,000 .....  | \$11,000                   |
| 42 U.S.C. 7413(b) .....            | CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.                           | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 7413 (d)(1) .....        | CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—ADMINISTRATIVE PENALTIES PER VIOLATION & MAX. | \$27,500/<br>\$220,000.   | \$32,500/<br>\$270,000     |
| 42 U.S.C. 7413(d)(3) .....         | CLEAN AIR ACT/MINOR VIOLATIONS/STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.   | \$5,500 .....   | \$6,500                    |
| 42 U.S.C. 7524(a) .....            | TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.                       | \$2,750 .....   | \$2,750                    |
| 42 U.S.C. 7524(a) .....            | VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a)(1),(2), (4),&(5) BY ANYONE.   | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 7524(c) .....            | ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & 7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.                                  | \$220,000 .....   | \$270,000                  |
| 42 U.S.C. 7545(d) .....            | VIOLATIONS OF FUELS REGULATIONS .....  | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 9604(e)(5)(B) .....      | SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.   | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 9606(b)(1) .....         | SUPERFUND/WORK NOT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.   | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 9609(a)&(b) .....        | SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622.   | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 9609(b) .....            | SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT .....   | \$82,500 .....  | \$97,500                   |
| 42 U.S.C. 9609(c) .....            | SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622.   | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 9609(c) .....            | SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.  | \$82,500 .....  | \$97,500                   |
| 42 U.S.C. 11045(a)&(b)(1),(2)&(3). | EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES.                          | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 11045(b) (2)&(3)         | EPCRA CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.   | \$82,500 .....  | \$97,500                   |
| 42 U.S.C. 11045(c)(1) .....        | EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.                                | \$27,500 .....  | \$32,500                   |
| 42 U.S.C. 11045(c)(2) .....        | EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).                             | \$11,000 .....  | \$11,000                   |
| 42 U.S.C. 11045(d)(1) .....        | EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.  | \$27,500 .....  | \$32,500                   |

**PART 27—[AMENDED]**

■ 2. The authority citation for Part 27 continues to read as follows:

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

Pub L. 104–134, 110 Stat. 1321, 31 U.S.C. 3701 note.

■ 3. Section 27.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

**§ 27.3 Basis for civil penalties and assessments.**

- (a) \* \* \*
- (1) \* \* \*

(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 \$6,500<sup>1</sup> for each such claim [The regulatory penalty provisions of this part effective on January 30, 1997 remain in effect for any violation of law occurring between January 30, 1997 and March 15, 2004.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(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 6,500<sup>2</sup> for each such statement.

\* \* \* \* \*

[FR Doc. 04-3231 Filed 2-12-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FL-91-200323(a); FRL-7622-1]

#### Approval and Promulgation of Implementation Plans; Florida: Southeast Florida Area Maintenance Plan Update

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Florida Department of Environmental Protection (FDEP) on December 20, 2002. This SIP revision satisfies the requirement of the Clean Air Act (CAA) for the second 10-year update for the Southeast Florida area (Dade, Broward, and Palm Beach Counties) 1-hour ozone maintenance plan. For transportation purposes, EPA is also finalizing its adequacy determination of the new Motor Vehicle Emissions Budgets (MVEBs) for the year 2015. EPA has determined that the MVEBs for the year 2015 contained in this SIP revision are adequate for transportation conformity purposes.

**DATES:** This direct final rule is effective April 13, 2004 without further notice,

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

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

unless EPA receives adverse comment by March 15, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted by mail to: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in Part I.B.1. through 3 of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Heidi LeSane, Air, Pesticides & Toxics Management Division, Air Planning Branch, Regulatory Development Section, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Mrs. LeSane's phone number is 404-562-9035. She can also be reached via electronic mail at [lesane.heidi@epa.gov](mailto:lesane.heidi@epa.gov) or Lynorae Benjamin, Air, Pesticides & Toxics Management Division, Air Planning Branch, Air Quality Modeling & Transportation Section, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Benjamin's phone number is 404-562-9040. She can also be reached via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under FL-91. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning

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 contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment, at the State Air Agency, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

###### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking FL-91" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.