



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

SEP 21 2004

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)

FROM: Thomas V. Skinner *TS*
Acting Assistant Administrator

TO: Regional Administrators

This memorandum modifies all existing civil penalty policies to conform to a final rule that increased statutory penalties. This amendment to our civil penalty policies will take effect on October 1, 2004. This memorandum also provides guidance on how to plead penalties and determine the new maximum penalty amounts that may be sought in administrative enforcement actions. On February 13, 2004, the United States Environmental Protection Agency (EPA) promulgated a final rule in the *Federal Register*, codified at 40 C.F.R. Part 19, Adjustment of Civil Penalties for Inflation and implementing the Debt Collection Improvement Act of 1996 (DCIA). At the same time, EPA also published minor conforming amendments to 40 C.F.R. Part 27, Program Fraud Civil Remedies. The rule took effect on March 15, 2004. Consequently, all violations occurring after March 15, 2004, are subject to statutory penalties that have been adjusted for inflation. We have attached a copy of the published rule for your convenience.

OVERVIEW

The primary purpose of the DCIA is to preserve the deterrent effect of civil statutory penalty provisions by adjusting them for inflation. In particular, the DCIA directed each federal agency to review its respective civil monetary penalty (CMP) provisions and to issue a regulation adjusting them for inflation. The DCIA also requires periodic review and adjustment of the CMPs at least once every four years.

The DCIA limited the first penalty inflation adjustment, effective on January 30, 1997, to 10% above the existing statutory provision's maximum amount. For EPA, this meant all the penalty provision maximums, with the exception of a few new penalty provisions added by the 1996 Safe Drinking Water Act (SDWA) amendments, which did not require any adjustment, were adjusted upward by 10%. By memorandum dated May 9, 1997 (1997 Memorandum), EPA modified all penalty policies to conform to the DCIA and the 1997 penalty inflation adjustment.

COPY

The second penalty inflation adjustment, pursuant to 40 C.F.R. Part 19, Adjustment of Civil Penalties for Inflation, became effective March 15, 2004. The statutory penalty provisions and the new maximum penalty amounts are found in the attached Table 1 of 40 C.F.R. 19.4. These increases in the penalty provisions apply only to violations that occur after the date the increases take effect; that is, violations after March 15, 2004. For example, Clean Water Act (CWA) Section 309 previously authorized judicial penalties of up to \$27,500 per day per violation; since the new rule became effective, the new maximum penalty amount is \$32,500. Therefore, if a violation subject to CWA section 309(d) started on March 1, 2004, and lasted through March 16, 2004, the maximum statutory penalty liability would consist of 15 days of violations at \$27,500 per day, plus 1 day of violation at \$32,500.

PENALTY POLICY CALCULATION CHANGES

By this memorandum, the Office of Enforcement and Compliance Assurance (OECA) modifies all existing penalty policies to increase the initial gravity component of the penalty calculation by 17.23 percent for those violations subject to the new rule. The inflation adjustment for the penalty provisions set forth in the rule was calculated by comparing the Consumer Price Index-Urban (CPI-U) for June 1996 with the CPI-U for June 2003. While not required by the DCIA, we believe this is consistent with the congressional intent in passing the DCIA and is necessary to effectively implement the mandated penalty increases set forth in 40 C.F.R. Part 19. Accordingly, each penalty policy is now modified to apply the appropriate guidelines set forth below. These new guidelines apply to all penalty policies, regardless of whether the policy is used for determining a specific amount to plead in a complaint or a bottom-line settlement amount. A complete list of all of our existing penalty policies is provided at the end of this memorandum.

A. If all of the violations in a particular case occurred on or before the effective date of the new rule, penalty policy calculations should be consistent with the 1997 Memorandum.

B. For those judicial and administrative cases in which some, but not all, of the violations occurred after the effective date of the new rule, the penalty policy calculations are modified by following these five steps:

1. Perform the economic benefit calculation for the entire period of the violation. Do not apply any mitigation or adjustment factors (such as good faith, ability to pay, or litigation considerations) at this point.
2. Apply the gravity component of the penalty policy in the standard way for all violations as follows. Do not apply any mitigation or adjustment factors at this point.
3. (a) For those penalty policies that were issued prior to January 31, 1997: Calculate the gravity component according to the penalty policy. For violations

that occurred on or after January 31, 1997, through March 15, 2004, multiply the gravity component by 1.1, reflecting the 10% increase. For violations that occurred after March 15, 2004, multiply the gravity component by 1.2895, reflecting both the 10% increase and the 17.23% increases [$1.10 \times 1.1723 = 1.2895$]. For example, if 40% of the violations occurred on or after January 31, 1997, through March 15, 2004, the gravity adjustment factor for those violations would be calculated as follows: [$1.1 \times .40 = .44$]. If 40% of the violations occurred after March 15, 2004, the gravity adjustment factor for those violations would be as follows: [$1.2895 \times .40 = .52$].

(b) For those penalty policies that were issued or revised on or after January 31, 1997, through March 15, 2004: Calculate the gravity component according to the penalty policy. For violations that occurred on or after January 31, 1997, through March 15, 2004, use the gravity component set forth in the penalty policy, as the 10% increase is reflected in those policies. For violations that occurred after March 15, 2004, multiply the gravity component by 1.1723, reflecting the 17.23% increase. For example, if 40% of the violations occurred on or after January 31, 1997, through March 15, 2004, the gravity adjustment factor for those violations would be .40. If 40% of the violations occurred after March 15, 2004, the gravity adjustment factor for those violations would be as follows: [$1.1723 \times .40 = .47$].

(c) Where all the violations in a particular case occurred after March 15, 2004: As discussed in subparagraphs (a) and (b) above, apply the penalty policy in the standard way to calculate the gravity component. Do not apply any mitigation or adjustment factors at this point. For those penalty policies that were issued to prior to January 31, 1997, multiply the gravity component by 1.2895, reflecting both the 10% increase and the 17.23% increase. For those penalty policies that were issued or revised after January 31, 1997, through March 15, 2004, multiply the gravity component by 1.1723, reflecting the 17.23% increase.

4. Add the economic benefit calculation and the total applicable gravity (the gravity-based penalty should be rounded to the nearest unit of 100) from above and adjust the total, as appropriate, pursuant to the mitigation factors in the applicable policy.

PENALTY PLEADING

If all of the violations in a particular case occurred on or before the effective date of the new rule, the pleading practices set forth in the 1997 Memorandum should be applied. If some of the violations in a particular case occurred after the effective date, then any penalty amount pled should use the newly adjusted maximum amounts. For example, in a civil judicial complaint alleging violations of Section 301 of the Clean Water Act, the prayer for relief would be written as follows:

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19, assess civil penalties against [name] not to exceed \$27,500 per day for each violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), that occurred on or after January 31, 1997 through March 15, 2004; and \$32,500 per day for each violation of Section 301 of the Act, 33 U.S.C. § 1311, that occurred after March 15, 2004, up to the date of judgment herein.

If all of the violations in a particular case occurred after the effective date of the new rule, then any penalty amount pled should use the newly adjusted maximum amounts. For example, in a civil judicial complaint alleging violations of Section 301 of the Clean Water Act, the prayer for relief would be written as follows:

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19, assess civil penalties against [name] not to exceed \$32,500 per day for each violation of Section 301 of the Act, 33 U.S.C. § 1311, up to the date of judgment herein.

ADMINISTRATIVE PENALTY CAPS FOR CWA, SDWA, AND CAA

The Debt Collection Improvement Act and 40 C.F.R. Part 19 raised the maximum penalty amounts that may be sought for individual violations in administrative enforcement actions, as well as the total amounts that may be sought in one administrative enforcement action. This increase is particularly relevant for administrative enforcement actions under the CWA, SDWA, and CAA, which are limited by penalty maximums that may be sought in a single action (commonly called "caps")¹. For example, prior to the DCIA and 40 C.F.R. Part 19, CWA Class II administrative penalties were authorized up to \$11,000 per violation and not to exceed \$137,500 in one administrative action; since the effective date of the new rule, the new penalty maximums are now \$11,000 and \$157,500, respectively. Similarly, Part 19 also raised the total penalty amounts that may be sought in a single administrative enforcement action under the CAA from \$220,000 to \$270,000 (although higher amounts may still be pursued with the joint approval of the Administrator and Attorney General). Note that the adjusted penalty caps apply if an action is filed or a complaint is amended after March 15, 2004, even if some or all of the violations occurred on or before March 15, 2004.

CHALLENGES IN THE COURSE OF ENFORCEMENT PROCEEDINGS

If a defendant challenges the validity of applying the adjusted penalty provisions on the grounds that EPA did not have the authority to promulgate the rule that adjusted the penalty maximums, please notify the Special Litigation and Projects Division of the challenge, so that OECA and the Region can coordinate our response before a response is filed.

¹ See CWA 33 U.S.C. § 309(g)(2)(A)-(B); CWA 33 U.S.C. § 311(b)(6)(B)(i)-(ii); SDWA 42 U.S.C. § 300g-3(g)(3)(B); SDWA 42 U.S.C. § 300h-2(c)(1)(B), (2)(B); CAA 42 U.S.C. § 113(d)(1); CAA 42 U.S.C. § 205(c).

FURTHER INFORMATION

Any questions concerning the new rule and implementation can be directed to David Abdalla of ORE's Special Litigation and Projects Division at (202) 564-2413 or by email at abdalla.david@epa.gov.

LIST OF EXISTING EPA CIVIL PENALTY POLICIES MODIFIED BY THIS MEMORANDUM

General

Policy on Civil Penalties (2/14/84)
A Framework for Statute-Specific Approaches to Penalty Assessments (2/14/84)
Guidance on Use of Penalty Policies in Administrative Litigation (12/15/95)

Clean Air Act - Stationary Sources

Clean Air Act Stationary Source Civil Penalty Policy (7/23/95) (This is a generic policy for stationary sources).
Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy (1/17/92)
Combined Enforcement Policy for Section 112(r) Risk of the Clean Air Act [Risk Management Plan] (8/15/01)

There are a series of appendices that address certain specific subprograms within the stationary source program.

Appendix I - Permit Requirements for the Construction or Modification of Major Stationary Sources of Air Pollution (Not Dated)
Clarification of the Use of Appendix I of the Clean Air Act Stationary Source Civil Penalty Policy (7/13/95)
Appendix II - Vinyl Chloride Civil Penalty Policy (Not Dated)
Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy (Revised 5/5/92)
Appendix IV - Volatile Organic Compounds Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance (Not Dated)
Appendix V - Air Civil Penalty Worksheet
Appendix VI - Volatile Hazardous Air Pollutant Civil Penalty Policy (Revised 3/2/88)
Appendix VII - Residential Wood Heaters (Not Dated)
Appendix VIII - Manufacture or Import of Controlled Substances in Amounts Exceeding Allowances Properly Held Under Protection of Stratospheric Ozone (11/24/89)
Appendix IX - Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant

or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of Stratospheric Ozone, Subpart B (Not Dated)

Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant (6/1/94)

Appendix XI - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart C: Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances (Not Dated)

Clean Air Act - Mobile Sources

Volatility Civil Penalty Policy (12/1/89)

Civil Penalty Policy for Administrative Hearings (1/14/93)

Manufacturers Programs Branch Interim Penalty Policy (3/31/93)

Interim Diesel Civil Penalty Policy (2/8/94)

Tampering and Defeat Device Civil Penalty Policy for Notices of Violation (2/28/94)

Draft Reformulated Gasoline and Anti-Dumping Settlement Policy (6/3/96)

TSCA

Guidelines for the Assessment of Civil Penalties Under Section 16 of TSCA (7/7/80) (Published in *Federal Register* on 9/10/80. Note that the first PCB penalty policy was published along with it, but the PCB policy is now obsolete). This is a generic policy for TSCA sources. There are a series of policies that address certain specific subprograms within TSCA. They are as follows:

Record keeping and Reporting Rules TSCA Sections 8, 12, and 13 (3/31/99)

PCB Penalty Policy (4/9/90)

TSCA Section 5 Enforcement Response Policy (6/8/89), amended (7/1/93)

TSCA Good Laboratory Practices Regulations Enforcement Policy (4/9/85)

TSCA Section 4 Test Rules (5/28/86)

TSCA Title II - Asbestos Hazard Emergency Response Act (AHERA)

Interim Final ERP for the Asbestos Hazard Emergency Response Act (1/31/89)

ERP for Asbestos Abatement Projects; Worker Protection Rule (11/14/89)

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act - Disclosure Rule Enforcement Response Policy (2/2000)

Safe Drinking Water Act - UIC

Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy
-- Underground Injection Control Guidance No. 79 (9/27/93)

Safe Drinking Water Act - PWS

New Public Water System Supervision Program Settlement Penalty Policy (5/25/94)

EPCRA

Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right to Know Act/Enforcement Response Policy for Section 103 of the Comprehensive Enforcement Response, Compensation, and Liability Act (9/30/99)

Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (Amended)(4/12/01)

Clean Water Act

Revised Interim Clean Water Act Settlement Penalty Policy (3/1/95) (3/3/98)

Clean Water Act Section 404 Civil Administrative Penalty Actions Guidance on Calculating Settlement Amounts (12/21/01)

Civil Penalty Policy for Section 311(b)(3) and Section 311 (j) of the Clean Water Act (8/98)

Pilot Enforcement Approach for MOM [Management, Operation and Maintenance] Cases in Region IV (1/23/03)

RCRA

RCRA Civil Penalty Policy (6/23/03)

Guidance on the Use of Section 7003 of RCRA (10/97)

UST

U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990)

Guidance for Federal Field Citation Enforcement (OSWER Directive- No. 9610-16) (October 1993)

CERCLA

Interim Policy on Settlement of CERCLA Section 106 (b)(1) and Section 107 (c)(3) Punitive Damage Claims for Noncompliance with Administrative Orders (9/30/97)

FIFRA

General FIFRA Enforcement Response Policy (7/2/90)
FIFRA Section 7(c) ERP (2/10/86)
Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act:
Good Laboratory Practice (GLP) Regulations (9/30/91)
FIFRA Worker Protection Standard Penalty Policy, Interim Final (9/97)

Attachment

cc: (w/attachment)

Regional Counsel, Regions I - X
Director, Office of Environmental Stewardship, Region I
Director, Division of Enforcement and Compliance Assurance, Region II
Director, Office of Enforcement, Compliance, and Environmental Justice, Region III
Director, Office of Enforcement and Compliance Assurance, Region V
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII
Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X
Regional Media Division Directors
Regional Enforcement Coordinators, Regions I - X
Dana Ott, OGC-CCID
OECA Office Directors
ORE Division Directors
OSRE Division Directors
Bruce Gelber, Chief, EES, DOJ
Deputy and Assistant Chiefs, EES, DOJ

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.

[FR Doc. 04-3246 Filed 2-12-04; 8:45 am]

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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/ \$137,500.	\$11,000/ \$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/ \$137,500.	\$11,000/ \$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 \$1,100 per barrel or unit.	\$32,500 or \$1,100 per barrel 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 \$3,300 per barrel or unit.	\$130,000 or \$4,300 per 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/ \$137,500.	\$65,000/ \$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/ \$137,500.	\$11,000/ \$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/ \$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/ \$220,000.	\$32,500/ \$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 \$6,500¹ 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 6,500² 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,

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 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.

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.

¹ 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).

² 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).