

**§ 17.47 Denial or revocation of eligibility for access to classified information.**

(a) Applicants and employees who are determined to not meet the standards for access to classified information established in section 3.1 of Executive order 12968 shall be:

(1) Provided with a comprehensive and detailed written explanation of the basis for that decision as the national security interests of the United States and other applicable law permit and informed of their right to be represented by counsel or other representative at their own expense;

(2) Permitted 30 days from the date of the written explanation to request any documents, records, or reports including the entire investigative file upon which a denial or revocation is based; and

(3) Provided copies of documents requested pursuant to this paragraph (a) within 30 days of the request to the extent such documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), and as the national security interests and other applicable law permit.

(b) An applicant or employee may file a written reply and request for review of the determination within 30 days after written notification of the determination or receipt of the copies of the documents requested pursuant to this subpart, whichever is later.

(c) An applicant or employee shall be provided with a written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal.

(d) Within 30 days of receipt of a determination under paragraph (c) of this section, the applicant or employee may appeal that determination in writing to the ARC, established under § 17.15. The applicant or employee may request an opportunity to appear personally before the ARC and to present relevant documents, materials, and information.

(e) An applicant or employee may be represented in any such appeal by an attorney or other representative of his or her choice, at his or her expense. Nothing in this section shall be construed as requiring the Department to grant such attorney or other representative eligibility for access to classified information, or to disclose to such attorney or representative, or permit the applicant or employee to disclose to such attorney or representative, classified information.

(f) A determination of eligibility for access to classified information by the ARC is a discretionary security decision.

Decisions of the ARC shall be in writing and shall be made as expeditiously as possible. Access shall be granted only where facts and circumstances indicate that access to classified information is clearly consistent with the national security interest of the United States, and any doubt shall be resolved in favor of the national security.

(g) The Department Security Officer shall have an opportunity to present relevant information in writing or, if the applicant or employee appears personally, in person. Any such written submissions shall be made part of the applicant's or employee's security record and, as the national security interests of the United States and other applicable law permit, shall also be provided to the applicant or employee. Any personal presentations shall be, to the extent consistent with the national security and other applicable law, in the presence of the applicant or employee.

(h) When the Attorney General or Deputy Attorney General personally certifies that a procedure set forth in this section cannot be made available in a particular case without damaging the national security interests of the United States by revealing classified information, the particular procedure shall not be made available. This is a discretionary and final decision not subject to further review.

(i) This section does not limit the authority of the Attorney General pursuant to any other law or Executive Order to deny or terminate access to classified information if the national security so requires and the Attorney General determines that the appeal procedures set forth in this section cannot be invoked in a manner that is consistent with the national security. Nothing in this section requires that the Department provide any procedures under this section to an applicant where a conditional offer of employment is withdrawn for reasons of suitability or any reason other than denial of eligibility for access to classified information. Suitability determinations shall not be used for the purpose of denying an applicant or employee the review proceedings of this section where there has been a denial or revocation of eligibility for access to classified information.

Dated: July 1, 1997.

**Janet Reno,**

*Attorney General.*

[FR Doc. 97-17925 Filed 7-9-97; 8:45 am]

BILLING CODE 4410-AR-M

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 4000, 4010, 4011, 4043, 4071, and 4302**

**RIN 1212-AA86**

**Adjustment of Civil Monetary Penalties for Inflation**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts for inflation the maximum amount specified in two civil monetary penalty provisions, as required by the Debt Collection Improvement Act of 1996. The maximum daily penalties under sections 4071 and 4302 of the Employee Retirement Income Security Act of 1974 are adjusted, respectively, from \$1,000 to \$1,100 and from \$100 to \$110.

**EFFECTIVE DATE:** This rule is effective August 11, 1997, and is applicable to violations (including continuing violations) that occur after that date.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, or Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The Debt Collection Improvement Act of 1996 amended the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 to require Federal agencies to regularly adjust certain civil monetary penalties for inflation. Agencies must increase the maximum amounts of civil monetary penalties by an initial cost-of-living adjustment and make further adjustments at least once every four years thereafter.

The cost-of-living adjustment is defined as the percentage by which the Consumer Price Index (CPI) for June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the civil monetary penalty was last set or adjusted. The calculated increase is subject to a specific rounding formula and a ten percent limitation for the initial adjustment.

Section 4071 of the Employee Retirement Income Security Act of 1974 (ERISA) authorizes the PBGC to assess a penalty against any person who fails to provide any notice or other material information required under various statutory or regulatory provisions within

the applicable specified time limit. The maximum amount of the penalty, which was last set when it was established by law in 1987, is \$1,000 per day for each day the failure continues. This final rule adds to the PBGC's regulations a new Part 4071 that provides that the maximum amount of the penalty under ERISA section 4071 will be \$1,100.

Section 4302 of ERISA provides that a person who fails, without reasonable cause, to provide a notice required under Subtitle E of Title IV of ERISA ("Special Provisions for Multiemployer Plans") or any implementing regulations is liable to the PBGC for a penalty. The maximum amount of the penalty, which was last set when it was established by law in 1980, is \$100 per day for each day the failure continues. This final rule adds to the PBGC's regulations a new Part 4302 that provides that the maximum amount of the penalty under ERISA section 4302 will be \$110.

This rule also amends three existing regulatory provisions that refer to PBGC assessment of penalties under ERISA 4071 of up to \$1,000 per day for failures to provide certain notices or other information:

- 29 CFR 4010.13, dealing with annual financial and actuarial information;
- 29 CFR 4011.3, dealing with participant notices; and
- 29 CFR 4043.3, dealing with reportable event notices.

These provisions are amended to provide that the penalty assessed under ERISA section 4071 may not exceed \$1,100 per day.

The PBGC has issued three recent policy statements dealing with the application of penalties under ERISA section 4071 (on July 18, 1995 (60 FR 36837), December 17, 1996 (61 FR 66338), and March 14, 1997 (62 FR 12521)). In applying those policy statements to violations occurring after the effective date of this final rule, the maximum assessable penalty referred to in the policy statements will be considered to be \$1,100 rather than \$1,000. (The guideline amounts in the July 18, 1995, policy statement remain unchanged.)

**Compliance With Rulemaking Guidelines**

The PBGC has determined that there is good cause for dispensing with notice and comment rulemaking as unnecessary. 5 U.S.C. 553(b). This rulemaking is required by the Debt Collection Improvement Act of 1996, and the PBGC has no discretion in determining the amount of the published adjustment. Accordingly, the PBGC is issuing this amendment as a final rule.

The PBGC has determined that this rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

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

**List of Subjects**

*29 CFR Part 4000*

Administrative practice and procedure.

*29 CFR Parts 4010, 4011, and 4043*

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Parts 4071 and 4302*

Penalties.

For the reasons set forth above, Chapter XL of Title 29 of the Code of Federal Regulations is amended as follows:

**Subchapter K—[Redesignated]**

1. Subchapter K Internal and Administrative Rules and Procedures (parts 4901—4907) is redesignated as "Subchapter L—Internal and Administrative Rules and Procedures".

**PART 4000—FINDING AIDS**

2–3. The authority citation for Part 4000 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3).

4. In § 4000.2, the table "Subchapter H—Enforcement Provisions" is amended by adding a new entry after the entry for "4068"; the table heading "Subchapter K—Internal Administrative Rules and Procedures" is revised to read "Subchapter L—Internal Administrative Rules and Procedures"; and a new table "Subchapter K—Multiemployer Enforcement Provisions" is added after the table "Subchapter J—Insolvency, Reorganization, Termination, and Other Rules Applicable to Multiemployer Plans", to read as follows:

**§ 4000.2 Derivation table.**

*	*	*	*	*
Ch. XL Part subpart/section(s)	Ch. XXVI Part(s) subpart/section(s)			
*	*	*	*	*
<b>Subchapter H—Enforcement Provisions</b>				
*	*	*	*	*
4071 .....	[new]			
*	*	*	*	*
<b>Subchapter K—Multiemployer Enforcement Provisions</b>				
4301 .....	[new]			

Ch. XL Part subpart/section(s)	Ch. XXVI Part(s) subpart/section(s)
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**Subchapter L—Internal Administrative Rules and Procedures**

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**PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING**

5. The authority citation for part 4010 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1310.

**§ 4010.13 [Amended]**

6. Section 4010.13 is amended by removing the figure "\$1,000" and adding in its place the figure "\$1,100."

**PART 4011—DISCLOSURE TO PARTICIPANTS**

7. The authority citation for part 4011 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1311.

**§ 4011.3 [Amended]**

8. In § 4011.3, paragraph (c) is amended by removing the figure "\$1,000" and adding in its place the figure "\$1,100."

**PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS**

9. The authority citation for part 4043 continues to read as follows:

**Authority:** 29 U.S.C. 1082(f), 1302(b)(3), 1343.

**§ 4043.3 [Amended]**

10. In § 4043.3, paragraph (e) is amended by removing the figure "\$1,000" and adding in its place the figure "\$1,100."

11. Part 4071 is added to subchapter H to read as follows:

**PART 4071—PENALTIES FOR FAILURE TO PROVIDE CERTAIN NOTICES OR OTHER MATERIAL INFORMATION:**

- Sec. 4071.1 Purpose and scope.
- 4071.2 Definitions.
- 4071.3 Penalty amount.

**Authority:** 28 U.S.C. 2461 note, as amended by sec. 31001(s)(1), Pub.L. 104-134, 110 Stat. 1321-373; 29 U.S.C. 1302(b)(3), 1371.

**§ 4071.1 Purpose and scope.**

This part specifies the maximum daily amount of penalties that may be assessed by the PBGC under ERISA section 4071 for certain failures to provide notices or other material

information, as such amount has been adjusted to account for inflation pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

#### § 4071.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA and PBGC.

#### § 4071.3 Penalty amount.

The maximum daily amount of the penalty under section 4071 of ERISA shall be \$1,100.

12. A new subchapter K consisting of part 4302 is added to read as follows:

### Subchapter K—Multiemployer Enforcement Provisions

#### PART 4302—PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEmployer PLAN NOTICES

Sec.

4302.1 Purpose and scope.

4302.2 Definitions.

4302.3 Penalty amount.

**Authority:** 28 U.S.C. 2461 note, as amended by sec. 31001(s)(1), Pub.L. 104-134, 110 Stat. 1321-373; 29 U.S.C. 1302(b)(3), 1452.

#### § 4302.1 Purpose and scope.

This part specifies the maximum daily amount of penalties for which a person may be liable to the PBGC under ERISA section 4302 for certain failures to provide multiemployer plan notices, as such amount has been adjusted to account for inflation pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

#### § 4302.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, multiemployer plan, and PBGC.

#### § 4302.3 Penalty amount.

The maximum daily amount of the penalty under section 4302 of ERISA shall be \$110.

Issued in Washington, DC, this 3rd day of July, 1997.

**John Seal,**

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 97-18078 Filed 7-9-97; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Part 256

RIN 1010-AB92

#### Surety Bonds for Outer Continental Shelf Leases; Correction

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a notice of final rulemaking concerning surety bond provisions of Minerals Management Service (MMS). MMS published the final rule in the **Federal Register** of May 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** John V. Mirabella, Engineering and Operating Division, at (703) 787-1607.

#### Correction

This document corrects the final rule published on May 22, 1997 (62 FR 27948). On page 27956 in the sixth line of the amendatory language number 11, "paragraph (e), (f), and (g)" should read "paragraphs (e) and (f)."

Dated: June 27, 1997.

**E. P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 97-18058 Filed 7-6-97; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[Docket# OR-1-0001; FRL-5852-3]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oregon

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency (EPA) approves the Sections 111(d)/129 State Plan submitted by Oregon on December 31, 1996, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons/day of municipal solid waste (MSW). See 40 CFR part 60, subpart Cb.

**DATES:** This action is effective on September 8, 1997 unless significant, material, and adverse comments are received by August 11, 1997. If significant, material, and adverse

comments are received by the above date, this direct final rule will be withdrawn, and timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be addressed to: Catherine Woo, Office of Air Quality (OAQ-107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ-107), Seattle, Washington 98101, and at Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204.

**FOR FURTHER INFORMATION CONTACT:** Catherine Woo, Office of Air Quality (OAQ-107), EPA, Seattle, Washington 98101, (206) 553-1814.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), the EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR Part 60, Subparts Eb and Cb, respectively. See 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons/day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District v. EPA*, 101 F.3d 1395 (D.C. Cir. 1996), as amended, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons/day of municipal solid waste (large MWC units).

Under section 129 of the Act, emission guidelines are not federally enforceable. Section 129(b)(2) of the Act requires States to submit to the EPA for approval State Plans that implement and enforce the emission guidelines. State Plans must be at least as protective