



[6450-01-P]

DEPARTMENT OF ENERGY

**10 CFR Parts 218, 431, 490, 601,
820, 824, 851, 1013, 1017, and 1050**

RIN 1990-AA43

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy ("DOE") today publishes this final rule to adjust DOE's civil monetary penalties ("CMPs") for inflation as mandated by the Debt Collection Improvement Act of 1996. This rule adjusts CMPs within the jurisdiction of DOE to the maximum extent allowed by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Preeti Chaudhari, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-8078.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Method of Calculation
- III. Summary of Final Rule
- IV. Final Rulemaking
- V. Regulatory Review

I. Background

In order to preserve the deterrent effect of civil penalties and foster compliance with the law, 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 (Pub. L. 104-134) ("the Act"), requires Federal agencies to regularly adjust each CMP provided by law within the jurisdiction of the agency. Also, the Act in part requires each agency to make further adjustments at least once every four years.

The Act provides that any increase in a CMP due to the calculated inflation adjustments shall apply only to violations that occur after the date the increase takes effect and states that the initial inflation adjustment may not exceed 10 percent of the existing penalty.

II. Method of Calculation

Under the Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment. The "cost-of-living" adjustment is defined as the amount by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the year in which the amount of such civil penalty was last set or adjusted pursuant to law. Any calculated increase under this adjustment is rounded to the nearest--

- (1) Multiple of \$10 in the case of penalties less than or equal to \$100;
- (2) Multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(3) Multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(4) Multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(5) Multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) Multiple of \$25,000 in the case of penalties greater than \$200,000.

28 U.S.C. 2461 note, sec. 5.

III. Summary of Final Rule

The following list summarizes the existing DOE regulations containing civil monetary penalties, and the penalties before and after adjustment. In some cases, the penalties remained the same after adjustment as before adjustment.

DOE Regulation Containing Civil Monetary Penalty	Before Adjustment	After Adjustment
10 CFR 207.7	\$4,000	\$4,000
10 CFR 218.42	\$8,000	\$9,000
10 CFR 429.120 (formerly 10 CFR 430.61)	\$200	\$200
10 CFR 431.382 (formerly 10 CFR 431.122 and 10 CFR 431.191)	\$110	\$200
10 CFR 490.604	\$8,000	\$9,000
10 CFR 501.181(c)	- \$40,000 - 3.3/mcf - 20/bbl	- \$40,000 - 3.3/mcf - 20/bbl
10 CFR 601.400 and App A	- minimum \$15,000 - maximum \$150,000	- minimum \$15,000 - maximum \$160,000
10 CFR 820.81 ¹	\$150,000	\$160,000
10 CFR 824.1 and App A	\$110,000	\$120,000
10 CFR 824.4 and App A	\$110,000	\$120,000
10 CFR 851.5 and App B ²	\$75,000	\$80,000
10 CFR 1013.3	\$8,000	\$9,000
10 CFR 1017.29	\$150,000	\$160,000
10 CFR 1050.303	\$8,000	\$9,000

IV. Final Rulemaking

In accordance with 5 U.S.C. 553(b), the Administrative Procedure Act, DOE generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. However, 5 U.S.C. 553(b)(B) provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is "impracticable,

¹ The civil penalties under this section and 10 CFR 851.5 encompass the civil penalty authorized by 50 U.S.C. 2731 (formerly 42 U.S.C. 7274d). Title 50 U.S.C. 2731 establishes a maximum civil penalty of \$5,000 per day for failure of any DOE contractor to provide specified training to individuals it employs who are engaged in hazardous substance response or emergency response at DOE nuclear weapons facilities or for failure to certify to DOE that such employees are adequately trained pursuant to orders issued by DOE relating to employee safety training. In 2009, the maximum civil penalty amount was adjusted to \$5,500 for each day of a violation. In corresponding guidance, DOE is today adjusting the civil penalty to a maximum of \$6,000 for each day a violation occurs. The adjusted civil penalty is well under the maximum civil penalty provided under 10 CFR 820.81 and 10 CFR 851.5. This footnote shall not be construed as limiting DOE's discretion to impose civil penalties for violations of training requirements contained in DOE's Nuclear Safety Requirements or 10 CFR Part 851, including training requirements relating to hazardous substance response or emergency response at DOE's nuclear weapons facilities.

² See footnote 1.

unnecessary, or contrary to the public interest."

DOE finds that providing an opportunity for public comment prior to publication of this rule is not necessary because DOE is carrying out a ministerial, non-discretionary duty specified in an Act of Congress. This rule incorporates requirements specifically set forth in 28 U.S.C. 2461 note requiring DOE to issue a regulation implementing inflation adjustments for all its civil penalty provisions. The formula for the amount of the penalty adjustment is prescribed by Congress. Prior notice and opportunity to comment are therefore unnecessary in this case because these changes are not subject to the exercise of discretion by DOE. These technical changes, required by law, do not substantively alter the existing regulatory framework nor in any way affect the terms under which DOE assesses civil penalties.

V. Regulatory Review

A. Executive Order 12866

Today's rule has been determined not to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect

of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As discussed above, DOE has determined that prior notice and opportunity for public comment is unnecessary. In accordance with 5 U.S.C. 604(a), no regulatory flexibility analysis has been prepared for today's rule.

D. Paperwork Reduction Act

This final rule imposes no new information collection requirements subject to the Paperwork Reduction Act.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 201 excepts agencies from assessing effects on State, local or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. Because this rule incorporates requirements specifically set forth in 28 U.S.C. 2461 note, DOE is not required to assess its regulatory effects under Section 201. Unfunded Mandates Reform Act sections 202 and 205 do not apply to today's action because they apply only to rules for which a general notice of proposed rulemaking is published. Nevertheless, DOE has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the public sector.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt State law and would not have a substantial direct effect 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. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather

than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects

10 CFR Part 218

Administrative practice and procedure, Penalties, Petroleum allocation.

10 CFR Part 431

Administrative practices and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

10 CFR Part 490

Administrative practice and procedure, Energy conservation, Penalties.

10 CFR Part 601

Government contracts, Grant programs, Loan programs, Penalties.

10 CFR Part 820

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

10 CFR Part 824

Government contracts, Nuclear materials, Penalties, Security measures.

10 CFR Part 851

Civil penalty, Hazardous substances, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

10 CFR Part 1013

Administrative practice and procedure, Claims, Fraud, Penalties.

10 CFR Part 1017

Administrative practice and procedure, Government contracts, National Defense, Nuclear Energy, Penalties, Security measures.

10 CFR Part 1050

Decorations, medals, awards, Foreign relations, Government employees, Government property, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 13, 2013

Eric J. Fygi
Deputy General Counsel

For the reasons set forth in the preamble, DOE amends chapters II, III, and X of title 10 of the Code of Federal Regulations as set forth below.

PART 218--STANDBY MANDATORY INTERNATIONAL OIL ALLOCATION

1. The authority citation for part 218 continues to read as follows:

Authority: 15 U.S.C. 751 et seq. ; 15 U.S.C. 787 et seq. ; 42 U.S.C. 6201 et seq. ; 42 U.S.C. 7101 et seq. ; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

2. Section 218.42 is amended by revising paragraph (b)(1) to read as follows:

§ 218.42 Sanctions.

* * * * *

(b) Penalties. (1) Any person who violates any provision of part 218 of this chapter or any order issued pursuant thereto shall be subject to a civil penalty of not more than

\$9,000 for each violation.

* * * * *

**PART 431--ENERGY EFFICIENCY PROGRAM FOR CERTAIN
COMMERCIAL AND INDUSTRIAL EQUIPMENT**

3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291-6317.

4. Section 431.382 is amended by revising paragraph (b) to read as follows:

§ 431.382 Prohibited acts.

* * * * *

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than \$200 for each violation.

* * * * *

PART 490--ALTERNATIVE FUEL TRANSPORTATION PROGRAM

5. The authority citation for part 490 continues to read as follows:

Authority: 42 U.S.C. 7191 *et seq.*; 42 U.S.C. 13201, 13211, 13220, 13251 *et seq.*

6. Section 490.604 is amended by revising paragraph (a) to read as follows:

§ 490.604 Penalties and Fines.

(a) Civil Penalties. Whoever violates § 490.603 of this part shall be subject to a civil penalty of not more than \$9,000 for each violation.

* * * * *

PART 601--NEW RESTRICTIONS ON LOBBYING

7. The authority citation for part 601 continues to read as follows:

Authority: 31 U.S.C. 1352; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308; 28 U.S.C. 2461 note.

8. Section 601.400 is amended by revising paragraphs (a), (b) and (e) to read as follows:

§601.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$15,000 and not more than \$160,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$15,000 and not more than \$160,000 for each such failure.

* * * * *

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$15,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$15,000 and \$160,000, as determined by the agency head or his or her designee.

* * * * *

9. Appendix A to part 601 is amended by:

a. Revising the last sentence of the undesignated paragraph following paragraph (3) of the section entitled, "Certification for Contracts, Grants, Loans, and Cooperative Agreements"; and

b. Revising the last sentence of the last undesignated paragraph, in the section entitled, “Statement for Loan Guarantees and Loan Insurance”.

The revisions read as follows:

Appendix A to Part 601 –Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

* * * * *

(3) * * *

* * * Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$15,000 and not more than \$160,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

* * * * *

* * * Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$15,000 and not more than \$160,000 for each such failure.

PART 820--PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

10. The authority citation for part 820 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

11. Section 820.81 is amended by revising the first sentence to read as follows:

§ 820.81 Amount of penalty.

Any person subject to a penalty under 42 U.S.C. 2282a shall be subject to a civil penalty in an amount not to exceed \$160,000 for each such violation. * * *

PART 824--PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

12. The authority citation for part 824 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282b, 7101 et seq., 50 U.S.C. 2401 et seq.

13. Section 824.1 is amended by revising the second sentence to read as follows:

§ 824.1 Purpose and scope.

* * * Subsection a. provides that any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation or order under the Act relating to the security or safeguarding of Restricted Data or other classified information, shall be subject to a civil penalty not to exceed \$120,000 for each violation.

* * *

14. Section 824.4 is amended by revising paragraph (c) to read as follows:

§ 824.4 Civil penalties.

* * * * *

(c) The Director may propose imposition of a civil penalty for violation of a requirement of a regulation or rule under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed \$120,000 for each violation.

* * * * *

15. Appendix A to part 824 is amended by:

- a. Revising the fourth and sixth sentences of paragraph 2.e., “Civil Penalty,” in section VIII entitled "Enforcement Actions"; and
- b. Revising the last sentence of paragraph 3.d., “Adjustment Factors,” in section VIII entitled "Enforcement Actions".

The revisions read as follows:

Appendix A to Part 824—General Statement of Enforcement Policy

* * * * *

VIII. Enforcement Actions

* * * * *

2. Civil Penalty

* * * * *

e. * * * In no instance will a civil penalty for any one violation exceed the \$120,000 statutory limit per violation. * * * Thus, the per violation cap will not shield a DOE contractor that is or should have been aware of an ongoing violation and has not reported it to DOE and taken corrective action despite an opportunity to do so from liability significantly exceeding \$120,000. * * *

* * * * *

3. Adjustment Factors

* * * * *

d. * * * Based on the degree of such factors, DOE may escalate the amount of civil penalties up to the statutory maximum of \$120,000 per violation per day for continuing violations.

* * * * *

PART 851-- WORKER SAFETY AND HEALTH PROGRAM

16. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 et seq. ; 42 U.S.C. 7101 et seq. ; 50 U.S.C. 2401 et seq.

17. Section 851.5 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 851.5 Enforcement.

(a) A contractor that is indemnified under section 170d. of the AEA (or any subcontractor or supplier thereto) and that violates (or whose employee violates) any requirement of this part shall be subject to a civil penalty of up to \$80,000 for each such violation. * * *

* * * * *

18. Appendix B to part 851 is amended by:

- a. Revising the last sentences of paragraphs (b)(1) and (b)(2) in section VI;
- b. Revising paragraph 1.(e)(1) in section IX ; and
- c. Revising the fourth sentence in paragraph 2.(f) in section IX.

The revisions read as follows:

Appendix B to Part 851— General Statement of Enforcement Policy

* * * * *

VI. Severity of Violations

(b) * * *

(1) * * * A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of \$80,000.

(2) * * * A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty (\$40,000).

* * * * *

IX. Enforcement Actions

* * * * *

1. Notice of Violation

* * * * *

(e) * * *

(1) DOE may assess civil penalties of up to \$80,000 per violation per day on contractors (and their subcontractors and suppliers) that are indemnified by the Price-Anderson Act,

42 U.S.C. 2210(d). *See* 10 CFR 851.5(a).

* * * * *

2. Civil Penalty

* * * * *

(f)*** In no instance will a civil penalty for any one violation exceed the statutory limit of \$80,000 per day. * * *

* * * * *

PART 1013--PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

19. The authority citation for part 1013 continues to reads as follows:

Authority: 31 U.S.C. 3801–3812; 28 U.S.C. 2461 note.

20. Section 1013.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§1013.3 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 \$9,000 for each such claim.

* * * * *

(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 \$9,000 for each such statement.

* * * * *

**PART 1017--IDENTIFICATION AND PROTECTION OF UNCLASSIFIED
CONTROLLED NUCLEAR INFORMATION**

21. The authority citation for part 1017 continues to read as follows:

Authority: 42 U.S.C. 7101 et seq.; 50 U.S.C. 2401 et seq.; 42 U.S.C. 2168; 28 U.S.C. 2461.

22. Section 1017.29 is amended by revising paragraph (c) to read as follows:

§1017.29 Civil penalty.

* * * * *

(c) *Amount of penalty.* The Director may propose imposition of a civil penalty for violation of a requirement of a regulation under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed \$160,000 for each violation.

* * * * *

PART 1050--FOREIGN GIFTS AND DECORATIONS

23. The authority citation for part 1050 continues to read as follows:

Authority: The Constitution of the United States, Article I, Section 9; 5 U.S.C. 7342; 22 U.S.C. 2694; 42 U.S.C. 7254 and 7262; 28 U.S.C. 2461 note.

24. Section 1050.303 is amended by revising the last sentence in paragraph (d) to read as

follows:

§1050.303 Enforcement.

* * * * *

(d) * * * The court in which such action is brought may assess a civil penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus \$9,000.

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