



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Parts 207, 218, 429, 431, 490, 501, 601, 820, 824, 851, 1013, 1017, and 1050

RIN 1990-AA46

Inflation Adjustment of Civil Monetary Penalties

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

ACTION: Interim final rule.

SUMMARY: The Department of Energy ("DOE") publishes this interim final rule to adjust DOE's civil monetary penalties ("CMPs") for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as "the Act"). This rule adjusts CMPs within the jurisdiction of DOE to the maximum amount required by the Act.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by RIN 1990-AA46, by any of the following methods:

1. Federal eRulemaking Portal: <https://www.regulations.gov/>. Follow the instructions for submitting comments.

2. E-mail to GC-33EnergyRegs@hq.doe.gov. Include RIN 1990-AA46 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment.

3. Mail: Address written comments to U.S. Department of Energy, Office of the General Counsel, Room 6A-179, 1000 Independence Avenue, SW, Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Preeti Chaudhari, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-8078.

SUPPLEMENTARY INFORMATION:

I. Background

II. Method of Calculation

III. Summary of Interim Final Rule

IV. Interim Final Rulemaking

V. Regulatory Review

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (“the Inflation Adjustment Act”), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Public Law 114-74) (“the 2015 Act”), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act requires agencies to adjust the level of CMPs with an initial “catch-up” adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation notwithstanding 5 U.S.C. 553. The 2015 Act also provides that any increase in a CMP shall apply only to CMPs, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

Pursuant to the 2015 Act, OMB issued a guidance memorandum on the implementation of the 2015 Act.¹ This interim final rule is issued in accordance with applicable law and the OMB guidance memorandum.

II. Method of Calculation

The method of calculating CMP adjustments applied in this interim final rule is required by the 2015 Act. Under the 2015 Act, catch-up adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year of the previous adjustment, and the October 2015 CPI-U. Subsequent annual inflation adjustments are to be based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year’s

¹ The guidance memorandum was issued on February 24, 2016, and references the adjustment multipliers and how to apply them.

October CPI-U. Under the 2015 Act, any increase in CMP shall be rounded to the nearest multiple of \$1.

III. Summary of the Interim Final Rule

The following list summarizes DOE authorities containing CMPs, and the penalties before and after adjustment. The list also identifies the year the original maximum and/or minimum penalty level was established or last adjusted, excluding any previous adjustments made under the Inflation Adjustment Act. Finally, the list provides the CPI-U adjustment multiplier.

DOE Authority Containing Civil Monetary Penalty	Before Adjustment	After Adjustment	Year Original Maximum and/or Minimum Penalty Level was Established or Last Adjusted	CPI-U Adjustment Multiplier
10 CFR 207.7	\$4,000	\$10,000	1974	4.65436
10 CFR 218.42	\$9,000	\$21,661	1975	4.33220
10 CFR 429.120	\$200	\$433	1975	4.33220
10 CFR 431.382	\$200	\$433	1975	4.33220
10 CFR 490.604	\$9,000	\$8,386	1992	1.67728
10 CFR 501.181	- \$40,000 - \$3.30/mcf - \$20/bbl	- \$88,613 - \$8/mcf - \$35/bbl	1978	3.54453
10 CFR 601.400 and App A	- minimum \$15,000 - maximum \$160,000	- minimum \$18,936 - maximum \$189,361	1989	1.89361
10 CFR 820.81	\$160,000	\$197,869	1988	1.97869

DOE Authority Containing Civil Monetary Penalty	Before Adjustment	After Adjustment	Year Original Maximum and/or Minimum Penalty Level was Established or Last Adjusted	CPI-U Adjustment Multiplier
10 CFR 207.7	\$4,000	\$10,000	1974	4.65436
10 CFR 824.1 and App A	\$120,000	\$141,402	1999	1.41402
10 CFR 824.4 and App A	\$120,000	\$141,402	1999	1.41402
10 CFR 851.5 and App B	\$80,000	\$ 91,830	2002	1.31185
10 CFR 1013.3	\$9,000	\$10,781	1986	2.15628
10 CFR 1017.29	\$160,000	\$254,645	1981	2.54645
10 CFR 1050.303	\$9,000	\$19,305	1977	3.86101
50 U.S.C. 2731 ²	\$6,000	\$8,655	1991	1.73099

In addition to the above, 10 CFR 820.80 was updated to indicate that subpart G of part 820 implements the Inflation Adjustment Act as further amended by the 2015 Act. In Appendix A to part 820, Appendix A to part 824, and Appendix B to part 851, references to the statutory CMP limit were clarified to refer to the statutory CMP limit, as periodically adjusted for inflation. The authority citations for some CFR parts included in this CMP adjustment were also updated to include the statutory citation for the Act, as amended, 28 U.S.C. 2461 note.

IV. Interim Final Rulemaking

Section 4(b)(1)(A) of the Act states that, for the for the first adjustment made under the Act after the date of enactment of the 2015 Act [Nov. 2, 2015] the head of an agency shall adjust CMPs through an interim final rulemaking and the adjustment shall take effect not later than August 1, 2016. As this rulemaking is the first adjustment made under the 2015 Act after its enactment, DOE must issue it as an interim final rule with a

² Implemented by 10 CFR 820.81, 10 CFR 851.5, and appendix B to 10 CFR part 851.

specified effective date without regard to the procedural requirements applicable to rulemaking under the Administrative Procedure Act, 5 U.S.C. 553.

In addition, 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, 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 interim final rule incorporates requirements specifically set forth in 28 U.S.C. 2461 note requiring DOE to issue a regulation implementing catch-up 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

This 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 interim 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, the 2015 Act requires that the catch-up adjustment be done through an interim final rule, and DOE has determined that prior notice and opportunity for public comment is unnecessary. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for today's interim final rule.

D. Paperwork Reduction Act

This interim 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 (Public Law 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 (Public Law 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 this 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. This 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 interim 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).

L. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this interim final rule.

List of Subjects

10 CFR Part 207

Administrative practice and procedure, Energy, Penalties.

10 CFR Part 218

Administrative practice and procedure, Penalties, Petroleum allocation.

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

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 501

Administrative practice and procedure, Electric power plants, Energy conservation, Natural gas, Petroleum.

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 June 21, 2016

Steven Croley
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 207—COLLECTION OF INFORMATION

1. The authority citation for part 207 continues to read as follows:

Authority: 15 U.S.C. 787 *et seq.*; 15 U.S.C. 791 *et seq.*; E.O. 11790, 39 FR 23185; 28 U.S.C. 2461 note.

2. Section 207.7 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 207.7 Sanctions.

* * * * *

(c) * * * (1) Any person who violates any provision of this subpart or any order issued pursuant thereto shall be subject to a civil penalty of not more than \$10,000 for each violation. * * *

* * * * *

PART 218--STANDBY MANDATORY INTERNATIONAL OIL ALLOCATION

3. 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.

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

§ 218.42 Sanctions.

* * * * *

(b) * * * (1) Any person who violates any provision of this part 218 or any order issued pursuant thereto shall be subject to a civil penalty of not more than \$21,661 for each violation.

* * * * *

**PART 429-- CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR
CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL
EQUIPMENT**

5. The authority citation for part 429 is revised to read as follows:

Authority: 42 U.S.C. 6291-6317; 28 U.S.C. 2461 note.

6. Section 429.120 is amended by revising the first sentence to read as follows:

§ 429.120 Maximum civil penalty.

Any person who knowingly violates any provision of §429.102(a) may be subject to assessment of a civil penalty of no more than \$433 for each violation. * * *

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

7. The authority citation for part 431 is revised to read as follows:

Authority: 42 U.S.C. 6291-6317; 28 U.S.C. 2461 note.

8. 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 \$433 for each violation.

* * * * *

PART 490--ALTERNATIVE FUEL TRANSPORTATION PROGRAM

9. The authority citation for part 490 is revised to read as follows:

Authority: 42 U.S.C. 7191 *et seq.*; 42 U.S.C. 13201, 13211, 13220, 13251 *et seq.*; 28 U.S.C. 2461 note.

10. 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 \$8,386 for each violation.

* * * * *

PART 501--ADMINISTRATIVE PROCEDURES AND SANCTIONS

11. The authority citation for part 501 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 8301 *et seq.*; 42 U.S.C. 8701 *et seq.*; E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

12. Section 501.181 is amended by revising paragraph (c)(1) to read as follows:

§ 501.181 Sanctions.

* * * * *

(c) * * * (1) Any person who violates any provisions of the Act (other than section 402) or any rule or order thereunder will be subject to the following civil penalty, which may not exceed \$88,613 for each violation: Any person who operates a powerplant or major fuel burning installation under an exemption, during any 12-calendar-month period, in excess of that authorized in such exemption will be assessed a civil penalty of up to \$8 for each MCF of natural gas or up to \$35 for each barrel of oil used in excess of that authorized in the exemption.

* * * * *

PART 601--NEW RESTRICTIONS ON LOBBYING

13. 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.

14. 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 \$18,936 and not more than \$189,361 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B to this part) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$18,936 and not more than \$189,361 for each such failure.

* * * * *

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$18,936, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$18,936 and \$189,361, as determined by the agency head or his or her designee.

* * * * *

15. Appendix A to part 601 is amended by:

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

b. Revising the last sentence of the third 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 \$18,936 and not more than \$189,361 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 \$18,936 and not more than \$189,361 for each such failure.

PART 820--PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

16. 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.

17. Section 820.80 is amended by revising the first sentence to read as follows:

§ 820.80 Basis and purpose.

This subpart implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act) (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74, section 701). 28 U.S.C. 2461 note. * * *

18. 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 \$197,869 for each such violation. * * *

19. Appendix A to part 820 is amended by:

a. Revising the fourth sentence of paragraph 2.e., “Civil Penalty,” in section IX entitled

"Enforcement Actions"; and

b. Revising paragraph a. in section XII entitled "Secretarial Notification and Consultation".

The revisions read as follows:

Appendix A to Part 820—General Statement of Enforcement Policy

* * * * *

IX. Enforcement Actions

* * * * *

2. Civil Penalty

* * * * *

e. * * * In no instance will a civil penalty for any one violation exceed the statutory limit, as periodically adjusted for inflation as required by law. * * *

* * * * *

XII. Secretarial Notification and Consultation

* * * * *

a. Proposals to impose civil penalties in an amount equal to or greater than the statutory limit, as periodically adjusted for inflation as required by law;

* * * * *

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

20. The authority citation for part 824 is revised to read as follows:

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.*, 50 U.S.C. 2401 *et seq.*; 28 U.S.C. 2461
note.

21. 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 \$141,402 for each violation.

* * *

22. 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 \$141,402 for each violation.

* * * * *

23. Appendix A to part 824 is amended by:

a. Revising the fourth and sixth sentences of paragraph 2.e., 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 statutory limit, as periodically adjusted for inflation as required by law, 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 the limit. * * *

* * * * *

3. Adjustment Factors

* * * * *

d. * * * Based on the degree of such factors, DOE may escalate the amount of civil penalties up to the statutory maximum, as periodically adjusted for inflation as required by law, per violation per day for continuing violations.

* * * * *

PART 851-- WORKER SAFETY AND HEALTH PROGRAM

24. The authority citation for part 851 is revised 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.*; 28 U.S.C. 2461 note.

25. 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 \$91,830 for each such violation. * * *

* * * * *

26. Appendix B to part 851 is amended by:

- a. Revising the last sentences of paragraphs (b)(1) and (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 \$91,830.

(2) * * * A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty (\$45,915).

* * * * *

IX. Enforcement Actions

* * * * *

1. Notice of Violation

* * * * *

(e) * * *

(1) DOE may assess civil penalties of up to \$91,830 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, as periodically adjusted for inflation as required by law, per day. * * *

* * * * *

PART 1013--PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

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

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

28. 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 \$10,781 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 \$10,781 for each such statement.

* * * * *

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

29. The authority citation for part 1017 is revised 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 note.

30. 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 \$254,645 for each violation.

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PART 1050--FOREIGN GIFTS AND DECORATIONS

31. 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.

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

§1050.303 Enforcement.

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(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 \$19,305.

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