

g. In paragraph (a)(3)(v), the words "or part of a country" are added after the word "country".

h. In paragraph (c), the words "or part of a country" are added after the word "country".

§ 94.9 [Amended]

5. In § 94.9, paragraph (a), footnote 1 and its reference in the text are redesignated as footnote 9, and in paragraph (b)(3) footnote 2 and its reference in the text are redesignated as footnote 10.

§ 94.12 [Amended]

6. In § 94.12, paragraph (b)(1)(iii)(B), footnote 1 and its reference in the text are redesignated as footnote 11, and in paragraph (b)(3) footnote 2 and its reference in the text are redesignated as footnote 12.

§ 94.16 [Amended]

7. In § 94.16, paragraph (b)(2), footnote 1 and its eight references in the text are redesignated as footnote 13.

§ 94.17 [Amended]

8. In § 94.17, in paragraph (a), the word "subpart" is removed and the word "section" is added in its place, and in paragraph (e), footnote 1 and its reference in the text are redesignated as footnote 14.

§ 94.18 [Amended]

9. In § 94.18, in paragraph (c)(2), footnote 1 and its reference in the text are redesignated as footnote 15, and in paragraph (d)(1), footnote 2 and its reference in the text are redesignated as footnote 16.

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

10. The authority citation for part 96 continues to read as follows:

Authority: 21 U.S.C. 111, 136, and 136a; 7 CFR 2.22, 2.80, and 371.2(d).

§ 96.2 [Amended]

11. In § 96.2, paragraph (a) is amended by adding the words "or part of a country" after the word "country" each time it appears.

Done in Washington, DC, this 26th day of August 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-23213 Filed 8-29-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF ENERGY

10 CFR Parts 207, 218, 430, 490, 501, 601, 820, 1013, 1017, and 1050

RIN 1901-AA76

Office of General Counsel; Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of General Counsel, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy ("DOE") is issuing this final non-discretionary 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 the 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. **EFFECTIVE DATE:** October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Duarte, U.S. Department of Energy, Office of General Counsel, GC-74, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

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. The Act requires each agency to make an initial inflationary adjustment for all applicable civil penalties within 180 days of the enactment of the statute, and 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.

For example, pursuant to section 13262 of Title 42 of the United States Code, the DOE may impose a civil penalty of up to \$5,000 per violation against any person who violates certain sections of the Energy Policy Act of 1992 or any regulation issued under such sections. This civil penalty was set in 1992 and has not been adjusted. The CPI for June 1996 is 156.7 and 140.2 for June 1992. The inflation factor is 156.7/140.2, or 1.117689. The maximum penalty amount after the increase would be \$ 5,588.45 and after rounding would be \$ 6,000. After applying the 10 percent limit on an initial increase, however, the new maximum penalty amount per violation is \$5,500. DOE made a similar calculation for each CMP adjusted in this rulemaking.

III. Explanation of Final Rule

The following list summarizes the existing DOE regulations containing civil monetary penalties, and the penalties before and after adjustment.

10 CFR 207.7	\$2,500	2,750
10 CFR 218.42	5,000	5,500
10 CFR 430.61	100	110
10 CFR 490.604	5,000	5,500

10 CFR 501.181(c)	25,000	27,500
	3/mcf	3.3/mcf
	10/bbl	11/bbl
10 CFR 601.400 and App A	minimum	10,000
	maximum	100,000
10 CFR 1013.3	5,000	5,500
10 CFR 1017.18	100,000	110,000
10 CFR 1050.303	5,000	5,500

In addition, Section 18 of the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2282a, authorizes DOE to impose civil monetary penalties of up to \$100,000 on certain persons for violation of DOE nuclear safety requirements in any applicable rule, regulation or order. The maximum penalty amount was enacted in 1988 and has not been adjusted. Since section 18 is perfectly clear, the implementing regulations at 10 CFR part 820 do not include a section on the maximum penalty amount. However, the \$100,000 limit is reflected in the DOE's General Statement of Enforcement Policy published as Appendix A to 10 CFR 820. In this rule, DOE is adding a new subpart G to 10 CFR Part 820 to set the maximum penalty as adjusted using the methodology described above.

Finally, the National Defense Authorization Act for Fiscal Years 1992 and 1993 authorizes civil penalties against any contractor of DOE who fails to provide for the training of individuals involved in hazardous substance response or emergency response at DOE nuclear weapons facilities or who fails to certify such training. 42 U.S.C. 7274d Section 7274d(b)(2) establishes the maximum civil penalty as \$5000 per day for each violation. DOE is developing a rule to implement 42 U.S.C. 7274d and will adjust the penalty authorized by that statute when it promulgates that rule.

IV. Regulatory Review

A. Administrative Procedure Act

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)(3)(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

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.

B. Review Under Executive Order 12866

Today's action does not constitute a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), and has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

C. Review Under the Paperwork Reduction Act.

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 501 *et seq.* are imposed by today's regulatory action.

D. Federalism

The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that there are no federalism implications that would warrant the preparation of a Federalism Assessment.

E. National Environmental Policy Act

This rule amends Title 10 of the Code of Federal Regulations to adjust civil monetary penalties within the jurisdiction of the DOE. The regulations being amended have no current environmental effect and this rulemaking will not change that *status quo*. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking amending an existing regulation that does not change the environmental effect of the regulation being amended. Accordingly,

neither an environmental assessment nor an environmental impact statement is required.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. 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. Since this rule incorporates requirements specifically set forth in 28 U.S.C. 2461 note, the 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, the Department has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the public sector.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, directs agencies to prepare a regulatory flexibility analysis whenever an agency is required to publish a general notice of proposed rulemaking for a rule. As discussed above, the Department has determined, that prior notice and opportunity for public comment is unnecessary and contrary to the public interest. In accordance with 5 U.S.C. 604(a), no regulatory flexibility analysis has been prepared for today's rule.

H. Small Business Regulatory Enforcement Fairness Act

In accordance with section 801 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 801, DOE will report to Congress the promulgation of this rule prior to its effective date. This rule is not a "major rule" as defined by 5 U.S.C. 804(a).

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 430

Administrative practice and procedure, Energy conservation.

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

Government contracts, DOE contracts, Nuclear safety, Civil penalty.

10 CFR Part 1013

Administrative practice and procedure, Claims, Fraud, Penalties.

10 CFR Part 1017

Administrative practice and procedure, National Defense, Nuclear Energy, Penalties.

10 CFR Part 1050

Decorations, medals, awards, Government employees.

Issued in Washington, D.C. on July 18, 1997.

Mary Anne Sullivan,

Acting General Counsel.

For the reasons set forth in the preamble, 10 CFR chapters II, III, and X are amended to read as follows:

PART 207—COLLECTION OF INFORMATION

1. The authority citation for part 207 is revised 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) *Civil Penalties.* (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 \$2,750 for each violation. * * *

* * * * *

PART 218—STANDBY MANDATORY INTERNATIONAL OIL ALLOCATION

3. The authority citation for part 218 is revised 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 paragraphs (b)(1) (b)(2) and (b)(3) 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 \$5,500 for each violation.

(2) Any person who willfully violates any provision of this part 218 or any order issued pursuant thereto shall be subject to a fine of not more than \$10,000 for each violation.

(3) Any person who knowingly and willfully violates any provision of this part 218 or any order issued pursuant thereto with respect to the sale, offer of sale, or distribution in commerce of oil in commerce after having been subject to a sanction under paragraph (b)(1) or (2) of this section for a prior violation of the provisions of this part 218 or any order issued pursuant thereto with respect to the sale, offer of sale, or distribution in commerce of oil shall be subject to a fine of not more than \$50,000 or imprisonment for not more than six months, or both, for each violation.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

5. The authority citation for part 430 is revised to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

6. Section 430.61 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 430.61 Prohibited acts.

* * * * *

(b) In accordance with section 333 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 \$110 for each violation. * * *

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

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

Authority: 42 U.S.C. 7191, 13211, 13235, 13251, 13257, 13258, 13260–3; 28 U.S.C. 2461 note.

8. 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 \$5,500 for each violation.

* * * * *

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

9. The authority citation for part 501 is revised 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.

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

§ 501.181 Sanctions.

* * * * *

(c) *Civil Penalties.* (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 \$27,500 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 \$3.30 for each MCF of natural gas or up to \$11 for each barrel of oil used in excess of that authorized in the exemption.

* * * * *

PART 601—NEW RESTRICTIONS ON LOBBYING

11. The authority citation for part 601 is revised 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.

12. 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 \$11,000 and not more than \$110,000 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 \$11,000

and not more than \$110,000 for each such failure.

* * * * *

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$11,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$11,000 and \$110,000, as determined by the agency head or his or her designee.

* * * * *

13. Appendix A to part 601-Certification Regarding Lobbying, is amended as follows:

a. In the section titled "Certification for Contracts, Grants, Loans, and Cooperative Agreements", paragraph (3), the last sentence of the second undesignated paragraph is revised; and

b. In the section titled "Statement for Loan Guarantees and Loan Insurance", the last sentence in the third undesignated paragraph is revised to 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 \$11,000 and not more than \$110,000 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 \$11,000 and not more than \$110,000 for each such failure.

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

14. The authority citation for part 820 is revised to read as follows:

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

15. A new subpart G is added to part 820 to read as follows:

Subpart G—Civil Penalties

820.80 Basis and purpose.
820.81 Amount of penalty.

Subpart G—Civil Penalties

§ 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). 28 U.S.C. 2461 note. As amended, the Act requires each agency head to adjust by regulation each

civil monetary penalty provided by law within the jurisdiction of the Federal agency by the inflation adjustment specified in 28 U.S.C. 2461 note. This subpart increases the civil penalty amount specified in 42 U.S.C. 2282a.

§ 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 \$110,000 for each such violation. If any violation under 42 U.S.C. 2282a is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

PART 1013—PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

16. The authority citation for part 1013 is revised to read as follows:

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

17. 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 \$5,500 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 \$5,500 for each such statement.

* * * * *

PART 1017—IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

18. The authority citation for part 1017 is revised to read as follows:

Authority: 42 U.S.C. 2168; 28 U.S.C. 2461 note.

19. Section 1017.18 is amended by revising the last sentence of the introductory text to paragraph (a) to read as follows:

§ 1017.18 Violations.

(a) Civil Penalty. * * * The Assistant Secretary for Defense Programs may

recommend to the Secretary imposition of this civil penalty, which shall not exceed \$110,000 for each violation.

* * * * *

PART 1050—FOREIGN GIFTS AND DECORATIONS

20. The authority citation for part 1050 is revised 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.

21. 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 \$5,500.

[FR Doc. 97-23212 Filed 8-29-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-181-AD; Amendment 39-10118; AD 97-18-08]

RIN 2120-AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes. This action requires a visual inspection to detect wear damage of the drag brace of the main landing gear (MLG), and replacement of any worn parts with new or serviceable parts. This action also requires an inspection to determine whether there is movement in the spherical bearing of the lower link of the drag brace, certain measurements of the drag brace, and repetitive inspections, if necessary. This amendment is prompted by reports of loose spherical bearings in the links of the drag brace of the MLG. The actions specified in this AD are intended to prevent reduced structural integrity and potential collapse of the