test-eligible swine when conducted according to instructions approved by APHIS. FP assays are interpreted as either positive, negative, or suspect. A 40-microliter sample is used. If a sample reads <10 millipolarization units (mP) above the mean negative control, the sample is considered negative. If a sample reads >20 mP above the mean negative control, the sample is considered positive. Samples that read between 10 and 20 mP above the negative control mean must be retested using 40 microliters of sample. If the 40-microliter sample is >20 mP above the mean negative control, the sample is considered positive. If the 40-microliter sample is still in the 10 to 20 mP range above the mean negative control, the sample is considered suspect. If the 40-microliter sample is <10 mP above the mean negative control, the sample is considered negative. Swine with negative FP assay results are classified as brucellosis negative. Swine with positive FP assay results are classified as brucellosis reactors, while swine with suspect FP assay results are classified as brucellosis suspects.

(6) The evaluation of test results for all swine shall be the responsibility of a designated epidemiologist in each State. The designated epidemiologist shall consider the animal and herd history and other epidemiologic factors when determining the brucellosis classification of swine. Deviations from the brucellosis classification criteria as provided in this definition of official test are acceptable when made by the designated epidemiologist.

* * * * *

Done in Washington, DC, this 29th day of October 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–24646 Filed 11–3–04; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 74

Material Control and Accounting of Special Nuclear Material

CFR Correction

In Title 10 of the Code of Federal Regulations, Parts 51 to 199, revised as of January 1, 2004, in part 74, at the beginning of page 466, the following text is reinstated:

§ 74.7 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

§ 74.8 Information collection requirements: OMB approval.

(a) The Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information if it does not display a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0123.

(b) The approved information collection requirements contained in this part appear in §§ 74.11, 74.13, 74.15, 74.17, 74.19, 74.31, 74.33, 74.41, 74.43, 74.45, 74.51, 74.57, and 74.59.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 74.15, DOE/NRC Form–741 is approved under Control No. 3150–0003.

(2) In § 74.13, DOE/NRC Form–742 is approved under Control No. 3150–0004.

(3) In § 74.13, DOE/NRC Form–742C is approved under Control No. 3150–0058.

(4) In § 74.17, NRC Form 327 is approved under Control No. 3150–0139.

[50 FR 7579, Feb. 25, 1985, as amended at 52 FR 10040, Mar. 30, 1987; 52 FR 19305, May 22, 1987; 56 FR 55998, Oct. 31, 1991; 62 FR 52189, Oct. 6, 1997; 67 FR 78144, Dec. 23, 2002]

Subpart B—General Reporting and Recordkeeping Requirements

§ 74.11 Reports of loss or theft or attempted theft or unauthorized production of special nuclear material.

(a) Each licensee who possesses one gram or more of contained uranium-235, uranium-233, or plutonium shall notify the NRC Operations Center within 1 hour of discovery of any loss or theft or other unlawful diversion of special nuclear material which the licensee is licensed to possess, or any incident in which an attempt has been made to commit a theft or unlawful diversion of special nuclear material. The requirement to report within 1 hour of discovery does not pertain to measured quantities of special nuclear material disposed of as discards or inventory difference quantities. Each licensee who operates an uranium enrichment facility shall notify the NRC Operations Center within 1 hour of discovery of any unauthorized production of enriched uranium. For centrifuge enrichment facilities the requirement to report enrichment levels greater than

[FR Doc. 04–55523 Filed 11–3–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 509

[No. 2004–51]

RIN 1550–AB95

Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustment

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act of 1990 requires all federal agencies with statutory authority to impose civil money penalties (CMPs) to evaluate and adjust those CMPs every four years. The Office of Thrift Supervision (OTS) last adjusted its CMP statutes in 2000. Consequently, OTS is issuing this final rule to implement the required adjustments to OTS's CMP statutes.

DATES: Effective November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Timothy P. Leary, Counsel (Banking & Finance), (202) 906–7170, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990[1] (FCPIAA) requires each agency to make inflationary adjustments to the CMPs in statutes that it administers.[2] Under the

[1] 28 U.S.C. 2461 note.

[2] Some of OTS's CMPs are in a commonly administered statute, 12 U.S.C. 1818. Each agency that administers this statute is making identical adjustments.

FCPIAA, agencies must make those adjustments at least once every four years. OTS last adjusted its CMPs in 2000.[3] OTS's civil money penalty adjustment regulation is 12 CFR 509.103. An increased CMP applies only to violations that occur after the increase takes effect.

While the CMP statutes of many agencies provide for minimum and maximum penalty amounts, all of OTS's CMP statutes provide only for a daily maximum amount per violation. Today's rule therefore refers only to maximum CMPs. Today's increases in maximum CMPs may not necessarily affect the amount of any CMP that OTS may seek for a particular violation. OTS calculates each CMP on a case-by-case basis based upon a variety of factors (including the gravity of the violation, whether the violation was willful or recurring, and any harm to the depository institution). As a result, the maximums merely serve as caps.

Under the statute, the agency determines the inflation adjustment by increasing the maximum CMP by a ''cost-of-living'' adjustment. The ''cost-of-living'' adjustment is the percentage 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 calendar year in which the amount of the CMP was last set or adjusted. Under Section 3 of the statute, the CPI is the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor.

The statute contains specific rules for rounding any increase.[4] Agencies do not have discretion in choosing whether to adjust a maximum CMP, how much to adjust a maximum CMP, or the methods used to determine the adjustment.

II. Summary of Calculation

To explain the inflation adjustment calculation, we will use the following example. Under 12 U.S.C. 1818(i), as adjusted in 2000 under 12 CFR 509.103, OTS may impose a daily maximum third-tier CMP not to exceed $1,175,000 for violations of certain banking laws.

First, we determine the appropriate CPI–Us. The statute requires OTS to use the CPI–U for June of the calendar year preceding the year of adjustment. Here, because we are adjusting CMPs in 2004, we use the CPI–U for June 2003, which was 183.7. We must also determine the CPI–U for June of the year the CMP was last set by law or adjusted for inflation. Because OTS last adjusted the CMPs under 12 U.S.C. 1818 in 2000, we use the CPI–U for June 2000, which was 172.4.

Second, we calculate the cost of living adjustment or inflation factor. To do this, we divide the CPI–U for June 2003 (183.7) by the CPI–U for June 2000 (172.4). Our result is 1.065 (*i.e.*, a 6.6% increase).

Third, we calculate the raw inflation adjustment. To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, $1,175,000 multiplied by the inflation factor of 1.065 equals $1,251,375.

Fourth, we round the raw inflation amounts according to the rounding rules in sec. 5(a) of the FCPIAA. Since we round only the increased amount, we calculate the increased amount by subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increased amount for the maximum penalty in our example is $76,375 (*i.e.*, $1,251,375 less $1,175,000). Under the rounding rules, if the penalty is greater than $200,000, we round the increase to the nearest multiple of $25,000. Therefore, the maximum penalty increase for our example is $75,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, $1,175,000 plus $75,000 yields a maximum inflation adjusted penalty amount of $1,250,000. [5]

III. Need for an Immediately Effective Final Rule

To issue a final rule without public notice and comment, an agency must find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.[6] Similarly, to issue a rule that is immediately effective, the agency must find good cause for dispensing with the 30-day delay required by the Administrative Procedure Act.[7] Moreover, sec. 302 of the Riegle Community Development and Regulatory Improvement Act of 1994[8] requires that a regulation that imposes new requirements take effect on the first day of the quarter following publication of the final rule. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

Under the statute, agencies must make the required CMP inflation adjustments: (1) According to the very specific formula in the statute; and (2) within four years of the last inflation adjustment, or by October 31, 2004. Agencies have no discretion as to the amount or timing of the adjustment. The regulation is ministerial, technical, and noncontroversial. OTS is unable to vary the amounts of the adjustments to reflect any views or suggestions provided by commenters. Accordingly, OTS believes that notice and comment are unnecessary. For these same reasons, OTS believes that there is good cause to make this rule effective immediately upon publication.

IV. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a general notice of proposed rulemaking.[9] As already noted, OTS has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, OTS has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

V. Executive Order 12866

OTS has determined that this final rule does not constitute a ''significant

[3] 12 CFR 509.103; 65 FR 61260 (Oct. 17, 2000).

[4] The rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000. See 28 U.S.C. 2461 note, sec. 5.

[5] Nine CMPs are subject to a slightly different treatment because the statutorily mandated computation and the rounding rules did not result in any adjustment in 2000. Eight of those penalties were last adjusted in 1996. For those eight penalties (12 U.S.C. 1464(v)(5), 12 U.S.C. 1467(d), 12 U.S.C. 1467a(r)(2), 12 U.S.C. 1817(j)(16)(A) and (B), 12 U.S.C. 1818(i)(2)(A) and (B), and 12 U.S.C. 3349(b) (first and second tier)), we compared the CPI–U for June 1996 (156.7) to the CPI–U for June 2003 (183.7), resulting in an inflation increase of 17.2%.

Moreover, because of application of the rounding rules, the $350 per violation penalty for failure to require flood insurance or notify the borrower of lack of coverage found in 42 U.S.C. 4012a(f) has never been adjusted for inflation. For that penalty, we compared the CPI–U for June of the year of enactment, 1994 (see Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, Title V, section 525, 108 Stat. 2260) (148.0) with the CPI–U for June 2003 (183.7). This resulted in an inflation increase of 24.1%. Because this is the first time these CMPs have been adjusted pursuant to the statute, the adjustment cannot exceed 10%. The adjustment to the per violation penalty in 42 U.S.C. 4012a(f) therefore is capped at $35; the resulting penalty is $385.

[6] 5 U.S.C. 553(b).

[7] *Id.*

[8] 12 U.S.C. 4802.

[9] 5 U.S.C. 603.

regulatory action'' for purposes of Executive Order 12866.

VI. Unfunded Mandates Act of 1995

OTS had determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to sec. 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 509

Administrative practice and procedure, Penalties.

■ Accordingly, for the reasons outlined in the preamble, OTS amends part 509 of chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

■ 1. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

■ 2. Revise § 509.103(c) to read as follows:

§ 509.103 Civil money penalties.

* * * * *

(c) *Inflation adjustment.* Under the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), OTS must adjust for inflation the civil monetary penalties in statutes that it administers. The following chart displays the adjusted civil money penalties. The amounts in this chart apply to violations that occur after November 4, 2004:

U.S. code citation	CMP description	New maximum amount
12 U.S.C. 1464(v)(4)	Reports of Condition—1st Tier	$2,200.
12 U.S.C. 1464(v)(5)	Reports of Condition—2nd Tier	$27,500.
12 U.S.C. 1464(v)(6)	Reports of Condition—3rd Tier	$1,250,000.
12 U.S.C. 1467(d)	Refusal to Cooperate in Exam	$6,500.
12 U.S.C. 1467a(i)(2)	Holding Company Act Violation	$27,500.
12 U.S.C. 1467a(i)(3)	Holding Company Act Violation	$27,500.
12 U.S.C. 1467a(r)(1)	Late/Inaccurate Reports—1st Tier	$2,200.
12 U.S.C. 1467a(r)(2)	Late/Inaccurate Reports—2nd Tier	$27,500.
12 U.S.C. 1467a(r)(3)	Late/Inaccurate Reports—3rd Tier	$1,250,000.
12 U.S.C. 1817(j)(16)(A)	Change in Control—1st Tier	$6,500.
12 U.S.C. 1817(j)(16)(B)	Change in Control—2nd Tier	$32,500.
12 U.S.C. 1817(j)(16)(C)	Change in Control—3rd Tier	$1,250,000.
12 U.S.C. 1818(i)(2)(A)	Violation of Law or Unsafe or Unsound Practice—1st Tier	$6,500.
12 U.S.C. 1818(i)(2)(B)	Violation of Law or Unsafe or Unsound Practice—2nd Tier	$32,500.
12 U.S.C. 1818(i)(2)(C)	Violation of Law or Unsafe or Unsound Practice—3rd Tier	$1,250,000.
12 U.S.C. 1884	Violation of Security Rules	$110.
12 U.S.C. 3349(b)	Appraisals Violation—1st Tier	$6,500.
12 U.S.C. 3349(b)	Appraisals Violation—2nd Tier	$32,500.
12 U.S.C. 3349(b)	Appraisals Violation—3rd Tier	$1,250,000.
42 U.S.C. 4012a(f)	Flood Insurance	$385 (per 4012a(f) violation). $125,000 (per calendar year).

Dated: October 29, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–24674 Filed 11–3–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18030; Directorate Identifier 2004–CE–13–AD; Amendment 39–13849; AD 2004–22–21]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE Model G120A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all GROB–WERKE (GROB) Model G120A airplanes. This AD requires you to repetitively inspect visually the area between the vertical stabilizer main spar and the nearby vertical stabilizer skin for any disbonding/crack; repair any disbonding/crack found; and calculate weight and balance after any repair. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct any disbonding/crack in the area between the vertical stabilizer main spar and nearby stabilizer skin, which could result in possible structural failure. This failure could lead to difficulty in airplane flight control.

DATES: This AD becomes effective on December 27, 2004.

As of December 27, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–18030.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which