

NUCLEAR REGULATORY COMMISSION**10 CFR Parts 2 and 13**

RIN 3150-AF37

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum Civil Monetary Penalties (CMPs) under statutes within the jurisdiction of the NRC. These changes are mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

The Commission's Rules of Practice are amended by adding a provision that establishes the maximum CMP for a violation of the AEA or any regulations or order issued thereunder in the amount of \$110,000. The provisions concerning program fraud civil penalties are amended by adjusting the maximum civil penalties under the Program Fraud Civil Remedies Act from \$5,000 to \$5,500 for each false claim or statement as determined in accordance with that statute. The final rule also corrects a typographical error.

DATES: The rule shall be effective on November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1615; e-mail RKD@nrc.gov., or Geoffrey D. Cant, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-3283; e-mail GDC@nrc.gov.

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I. Introduction

The Commission has amended its regulations in Part 2 and 13 in order to adjust maximum civil monetary penalties within its jurisdiction as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as

amended by the Debt Collection Improvement Act of 1996 (the Act) (Pub. L. 104-134, 110 Stat. 1321-358, 373, codified at 28 U.S.C. 2461 note).

II. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 required that the President submit, within 6 months and every fifth year thereafter, a report to certain Congressional committees on the specific amounts of civil monetary penalties that were authorized under Federal law, the amount of the penalties if adjusted for inflation, and a description of modifications to Federal law that would be necessary to increase the penalties to meet the inflation adjustment. Aside from modification of the scope and timing of Presidential reports to Congress, the Debt Collection Improvement Act of 1996 amended that statute to require that the head of each agency adjust by regulation the CMPs within the jurisdiction of the agency for inflation, no later than 180 days after the date of enactment of the Act and at least once every four years thereafter. Thus, the first inflation adjustment is required by October 23, 1996, which is 180 days after enactment of the Act on April 26, 1996.

The inflation adjustment is to be determined by increasing the maximum CMPs or the range of minimum and maximum civil monetary penalties, as applicable, for each CMP by the percentage that 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 last calendar year in which the amount of such penalty was last set or adjusted pursuant to law. In the case of penalties greater than \$1,000 but less than or equal to \$10,000, inflation adjustment increases are to be rounded to the nearest multiple of \$1,000. Increases are to be rounded to the nearest multiple of \$10,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000. However, the first adjustment of a CMP pursuant to the Debt Collection Improvement Act of 1996 may not exceed 10 percent of such penalty.

III. Discussion

Section 234 of the Atomic Energy Act (AEA), as amended in 1980, has limited civil penalties for violations of the Atomic Energy Act to \$100,000 per day per violation. As adjusted for inflation, the penalty amount would be \$180,000 (after rounding the amount of the inflation adjustment increase to the nearest multiple of \$10,000). Because the Debt Collection Improvement Act of 1996 limits the amount of the first

required increase to 10% of the maximum penalty amount, however, the NRC must limit its inflation adjustment increase to \$10,000, *i.e.*, 10 percent of \$100,000. Thus, the NRC has by regulation, by addition of a subsection (j) to 10 CFR 2.205, established a new maximum CMP under the Atomic Energy Act in the amount of \$110,000. This new maximum CMP applies only to violations which occur after the effective date of this regulation.

Monetary penalties under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801, 3802, and the NRC's implementing regulations, 10 CFR 13.3(a)(1) and (b)(1), had been limited to \$5,000 per violation. As adjusted fully for inflation, the penalty amount would be \$7,000. Because of the 10 percent limit on the increase in the penalty for the first adjustment under the Debt Collection Improvement Act of 1996, the amount of the first required increase is limited to \$500. Thus, NRC has amended 10 CFR 13.3(a)(1) and (b)(1) by increasing the maximum CMP for each false statement or claim under the Program Fraud Civil Remedies Act from \$5,000 to \$5,500. This new maximum CMP applies only to violations which occur after the effective date of this regulation.

The Commission has no discretion to set alternative levels of adjusted civil penalties since the amount of the inflation adjustment must be calculated in accordance with the statutory formula. Conforming changes to the NRC Enforcement Policy (NUREG-1600), published in the Federal Register on June 30, 1995 (60 FR 34381), will be made and published in a notice accompanying this rule.

The final rule also corrects a typographical error in 10 CFR 13.3(a)(1)(iv). The word "as" is substituted for the word "was" and the clause, as revised, now conforms to the exact words of 31 U.S.C. 3802(a)(1)(D), as the NRC originally intended.

IV. Procedural Background

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require that process "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In this instance, the NRC finds, for good cause, that solicitation of public comment on this final rule is unnecessary and impractical. Congress has required that the agency issue the

amendments contained in the rule, and provided no discretion to the agency regarding the substance of the amendments. All that is required of the NRC for determination of the amount of the inflation adjustment are ministerial computations.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) and 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation. This action merely adjusts monetary civil penalties for inflation as required by statute and involves no policy determinations.

VI. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

This final rule adjusts for inflation the maximum civil penalties under the Atomic Energy Act of 1954, as amended, and under the Program Fraud Civil Remedies Act of 1986. The adjustments and the formula for determining the amount of the adjustment are mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321-358, 373, codified at 28 U.S.C. 2461 note). Congress passed that legislation on the basis of its findings that the power to impose monetary civil penalties is important to deterring violations of Federal law and furthering the policy goals of Federal laws and regulations. Congress has also found that inflation has diminished the impact of these penalties and their effect. Thus, principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain their deterrent effect and promote compliance with the law. Thus, these are anticipated impacts of implementation of the mandatory provisions of the legislation. Direct monetary impacts will fall only upon licensees or other persons subjected to NRC enforcement action or those licensees or persons subjected to liability pursuant to the provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812) and the

NRC's implementing regulations (10 CFR Part 13).

VIII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

IX. Backfit Analysis

The NRC has determined that these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1); therefore, a backfit analysis need not be prepared.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 13

Claims, Fraud, Organization and function (government agencies), Penalties.

For the reasons set out above and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Federal Civil Penalties Adjustment Act of 1990, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2 and 13.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 is revised to read as follows:

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133,

2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. Section 2.205 is amended by adding paragraph (j) to read as follows:

§ 2.205 Civil penalties.

* * * * *

(j) *Amount.* A civil monetary penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or any other statute within the jurisdiction of the Commission that provides for imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed \$110,000 for each violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

PART 13—PROGRAM FRAUD CIVIL REMEDIES

3. The authority citation for Part 13 is revised to read as follows:

AUTHORITY: Public Law 99-509, secs. 6101-6104, 100 Stat. 1874 (31 U.S.C. 3801-3812). Sections 13.13 (a) and (b) also issued under section Pub. L. 101-410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note).

4. In § 13.3, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 13.3 Basis for civil penalties and assessments.

(a) *Claims.*

(1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;
(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;
(B) Is false, fictitious, or fraudulent as a result of such omission; and
(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(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) *Statements.*

(1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(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 law, to a civil penalty of not more than \$5,500 for each such statement.

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Dated at Rockville, Maryland, this 1st day of October, 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

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