

NUCLEAR REGULATORY COMMISSION**10 CFR Parts 1, 2 and 13**

RIN 3150-AG59

Adjustment of Civil Penalties for Inflation; Miscellaneous Administrative Changes

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) it can assess 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 NRC's Rules of Practice are amended by adding a provision that adjusts the maximum CMP for a violation of the Atomic Energy Act (AEA) or any regulations or order issued thereunder from \$110,000 to \$120,000 per violation per day. The provisions concerning program fraud civil penalties are amended by adjusting the maximum civil penalties under the Program Fraud Civil Remedies Act from \$5,500 to \$6,000 for each false claim or statement. This final rule also amends the designation of the term "Reviewing official" for the purposes of the Program Fraud Civil Remedies Act to reflect a reorganization in the Office of the General Counsel (OGC) as well as making a minor modification to NRC regulations to reflect OGC's role in providing legal advice to NRC staff upon request on agency procurement matters.

DATES: The rule shall be effective on November 3, 2000.

FOR FURTHER INFORMATION CONTACT:

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I. Background*A. Civil Penalty Adjustment*

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, requires that the head of each agency adjust by regulation the CMPs within the jurisdiction of the agency for inflation at least once every four years. The NRC's last adjustment to the CMPs within its jurisdiction occurred on November 12, 1996. Thus, this inflation adjustment must be implemented by November 12, 2000.

The inflation adjustment is to be determined by increasing the maximum CMPs or the range of the minimum and maximum CMPs, as applicable, 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. For the purposes of this adjustment, applying this formula results in a six percent increase to the CMPs. 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 \$100,000 but less than or equal to \$200,000.

B. Miscellaneous Administrative Changes

Under the Program Fraud Civil Remedies Act, the NRC is required to designate a "reviewing official." The reviewing official has several duties under the Act, including making the determination as to whether there is adequate evidence against an individual to warrant commencement of an administrative proceeding.

Under the Commission's original rules implementing the Act, the Deputy General Counsel for Licensing and Regulation, or his or her designee, is identified as the reviewing official for the purposes of the Program Fraud Civil Remedies Act. 10 CFR 13.2 (2000). Because the position of Deputy General Counsel for Licensing and Regulation does not exist as such in the Office of the General Counsel, the Commission is designating the General Counsel as the "reviewing official." The General Counsel may delegate this authority.

This final rule would also make a minor modification to the language of 10 CFR 1.23(e). This modification reflects the Office of General Counsel's long-standing practice of providing legal advice and opinions to NRC staff on procurement matters in response to specific requests from contracting offices and other interested agency offices, rather than preparing or concurring in all NRC contracts and interagency agreements to acquire supplies and services.

II. Discussion

Section 234 of the AEA has limited civil penalties for violations of the Atomic Energy Act to \$100,000 per day per violation. In 1996, pursuant to the Debt Collection Improvement Act (DCIA), the NRC adjusted this figure to \$110,000. The DCIA also amended the

Federal Civil Penalties Inflation Adjustment Act of 1990 to require that the head of each agency adjust the CMPs within the jurisdiction of the agency for inflation at least once every four years. Therefore, the NRC is required to adjust the CMPs within its jurisdiction this year. After this mandatory adjustment for inflation, the new CMP penalty amount for a violation of the AEA will be \$120,000 per day per violation (rounding the amount of the inflation adjustment increase to the nearest multiple of \$10,000). Thus, by regulation, the NRC has amended 10 CFR 2.205 to reflect a new maximum CMP under the AEA in the amount of \$120,000 per day per violation. This new maximum CMP applies only to violations that 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), are currently limited to \$5,500. As adjusted for inflation, the penalty amount will be \$6,000. Thus, NRC has amended 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 \$5,500 to \$6,000. Again, 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 inflation adjustment must be calculated in accordance with a formula established by statute. Conforming changes to the NRC Enforcement Policy (NUREG-1600) published in the **Federal Register** on May 1, 2000 will be made and published in a notice accompanying this rule.

The Program Fraud Civil Remedies Act "reviewing official" in 10 CFR 13.2 currently means the Deputy General Counsel for Licensing and Regulation of the NRC or his or her designee. This position does not exist in the current OGC organization. Accordingly, the Commission is amending the designation of "reviewing official" to mean the General Counsel of the NRC or his or her designee.

This final rule would also make a minor modification to the language of 10 CFR 1.23(e). The existing language implies that OGC provides legal advice and opinions on all agency procurement matters. This modification reflects OGC's long-standing practice of providing legal advice and opinions to NRC staff on procurement matters only in response to specific requests from contracting offices and other interested

offices, rather than preparing or concurring in all NRC contracts and interagency agreements to acquire supplies and services.

III. 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 an agency use the public notice and comment 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 adjust the CMPs within the jurisdiction of the agency for inflation at least once every four years, and provided no discretion to the agency regarding the substance of the amendments. All that is required of the NRC for determination of the inflation adjustment are ministerial computations. The NRC also finds that amending the designation of reviewing official under the Program Fraud Civil Remedies Act and the minor modification to reflect OGC's actual long-standing practice of providing legal advice to NRC staff on procurement matters upon request are routine matters of agency organization, procedure, or practice exempt from the requirement for public notice and comment.

IV. 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 involves no policy determinations. It merely adjusts monetary civil penalties for inflation as required by statute and amends the definition of "reviewing official" for Program Fraud Civil Remedies Act matters to reflect a reorganization in the Office of the General Counsel and incorporates a minor modification to the language of 10 CFR 1.23(e) to reflect actual long-standing OGC practice in providing legal advice to NRC staff, upon request, on agency procurement matters.

V. Paperwork Reduction Act Statement

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

VI. 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 (Pub. L. No. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996, as amended (Pub. L. No. 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. The principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain the deterrent effect of civil monetary penalties, and promote compliance with the law. Thus, these are anticipated impacts of implementation of the mandatory provisions of the legislation. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement 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). This final rule also makes an adjustment to the designation of "reviewing official" for Program Fraud Civil Remedies Act matters to reflect an Office of the General Counsel reorganization and incorporates a minor modification to the language of 10 CFR 1.23(e) to reflect OGC's long-standing practice of providing legal advice and opinions to NRC staff on procurement matters in response to specific requests from contracting offices and other interested agency offices, rather than preparing or concurring in all NRC contracts and interagency agreements to acquire supplies and services.

VII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b),

the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking adjusts, for inflation, the amount charged for civil penalties, as required by the Debt Collection Improvement Act. The law mandates that adjustments for inflation be made at least every four years and sets forth a formula for determining the amount of the adjustment. The Nuclear Regulatory Commission has no discretion in implementing these requirements. To the extent that small entities are impacted by this rule, these are anticipated impacts resulting from the mandatory provisions of the legislation authorized by Congress.

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. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards developed by or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. There are no consensus standards that apply to the inflation adjustment requirements in this final rule. Thus, the provisions of the Act do not apply to this rulemaking.

X. Backfit Analysis

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

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

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 Inflation 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 1, 2 and 13.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85-256, 71 Stat. 579, Pub. L. 95-209, 91 stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.23, paragraph (e) is revised to read as follows:

§ 1.23 Office of the General Counsel.

* * * * *

(e) As requested, provides the agency with legal advice and opinions on acquisition matters, including agency procurement contracts; placement of work at Department of Energy national laboratories; interagency agreements to acquire supplies and services; and grants and cooperative agreements. Prepares or concurs in all other interagency agreements, delegations of authority, regulations; orders; licenses; and other legal documents and prepares legal interpretations thereof;

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

3. The authority citation for part 2 continues 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). Sections 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).

4. In § 2.205 paragraph (j) is revised 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 the imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed \$120,000 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

5. The authority citation for part 13 continues to read as follows:

Authority: Public Law 99-509, sec 6101-6104, 100 Stat. 1874 (31 U.S.C. 3801-3812). Sections 13.13(a) and (b) 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).

6. In § 13.2 the definition of "Reviewing official" is revised to read as follows:

§ 13.2 Definitions.

* * * * *

Reviewing official means the General Counsel of the Nuclear Regulatory Commission or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

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7. 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 \$6,000 for each such claim.

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(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 by law, to a civil penalty of not more than \$6,000 for each such statement.

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Dated at Rockville, Maryland, this 27th day of September, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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