

Rules and Regulations

Federal Register

Vol. 69, No. 206

Tuesday, October 26, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AH55

Adjustment of Civil 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) 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 adjusting the maximum CMP for a violation of the Atomic Energy Act of 1954, as amended, (AEA) or any regulation or order issued under the AEA from \$120,000 to \$130,000 per violation per day.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Shelly D. Cole, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2549; e-mail SDC1@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

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 3, 2000 (*See* 65 FR 59270; October 4, 2000). Thus, another

inflation adjustment must be made by November 3, 2004.

The inflation adjustment is to be determined by increasing the maximum CMPs 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 adjusted. For the purposes of this adjustment, applying this formula results in a seven percent increase to the maximum 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.

II. Discussion

Section 234 of the AEA limits civil penalties for violations of the Atomic Energy Act to \$100,000 per day per violation. In 1996, under 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, in 2000, the NRC adjusted the maximum CMPs to \$120,000 per day per violation. The NRC is required to adjust the CMPs within its jurisdiction again this year. After this mandatory adjustment for inflation, the adjusted maximum CMP for a violation of the AEA or any regulation or order issued under the AEA will be \$130,000 per day per violation (rounding the amount of the inflation adjustment increase to the nearest multiple of \$10,000). Thus, the NRC is amending Title 10 of the Code of Federal Regulations (10 CFR) 2.205 to reflect a new maximum CMP under the AEA in the amount of \$130,000 per day per violation. The amended 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 United States Code (U.S.C.) 3801, 3802, and the NRC's implementing regulations at 10 CFR 13.3(a)(1) and (b)(1), are currently limited to \$6,000.

A seven percent increase, when rounded to the nearest multiple of \$1000, as required by section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, does not result in an adjustment to the maximum CMP. Thus, the maximum CMP will remain at \$6,000 for each false statement or claim under the Program Fraud Civil Remedies Act.

The Commission has no discretion to set alternative levels of adjusted civil penalties because the amount of inflation adjustment must be calculated by a formula established by statute. Conforming changes to the NRC Enforcement Policy (NUREG-1600) published in the **Federal Register** on May 1, 2000 (65 FR 25368), will be made and published in a notice accompanying this rule.

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 an agency to 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 the NRC to adjust the CMPs within NRC jurisdiction for inflation at least once every four years, and provided no discretion regarding the substance of the amendments. The NRC is required only to perform ministerial computations to determine the inflation adjustment to the CMPs.

IV. Voluntary Consensus Standards

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.

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 (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.

VI. 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.*).

VII. Regulatory Analysis

This final rule adjusts for inflation the maximum civil penalties under the AEA. 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. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996, as amended (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. 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.

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 Chapter 1; therefore, a backfit analysis need not be prepared.

List of Subjects in 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.

■ For the reasons set out above and under the authority of the AEA; 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 part 2.

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

■ 1. 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; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

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. 10143(0); 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). Section 2.102, 2.103, 2.104, 2.105, 2.321 also issued under secs. 102, 163, 104, 105, 183i, 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. 90, as amended by section 3100(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.754, 2.712, 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). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. 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 \$130,000 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.

Dated in Rockville, Maryland, this 12th day of October, 2004.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 04-23899 Filed 10-25-04; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM293, Special Conditions No. 25-276-SC]

Special Conditions: Gulfstream Aerospace Corporation Model G-1159, G-1159A, and G-1159B Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation Model G-1159, G-1159A, and G-1159B series airplanes modified by Business Jet Technologies. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain