

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 13

[NRC-2016-0057]

RIN 3150-AJ72

Adjustment of Civil Penalties for Inflation

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum Civil Monetary Penalties (CMPs) it can assess under statutes enforced by the agency. These changes are mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Improvements Act). The NRC is amending its regulations to adjust 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 \$140,000 to \$280,469 per violation, per day. Additionally, the NRC is amending provisions concerning program fraud civil penalties by adjusting the maximum CMP under the Program Fraud Civil Remedies Act from \$7,000 to \$10,781 for each false claim or statement.

DATES: This interim final rule is effective on August 1, 2016.

ADDRESSES: Please refer to Docket ID **NRC-2016-0057** when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2016-0057**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Eric Michel, Office of the General Counsel, telephone: 301-287-3704, e-mail: Eric.Michel2@nrc.gov, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

SUPPLEMENTARY INFORMATION:

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I. Background

Congress passed the FCPIAA in 1990 to allow for regular adjustment for inflation of CMPs, maintain the deterrent effect of civil monetary penalties and promote compliance with the law, and improve the collection of CMPs by the Federal government (Pub L. 101-410, 104 Stat. 890; 28 U.S.C. 2461 note). As amended by the Debt Collection Improvement Act of 1996, the FCPIAA required that the head of each agency review, and if necessary adjust by regulation, the CMPs assessed under statutes enforced by that agency at least once every 4 years, in accordance with a statutory formula linked to the percentage change in the Consumer Price Index (CPI) (Pub. L. 104-134, 110 Stat. 1321-373). The NRC has amended the CMP amounts

under statutes it enforces (the AEA and Program Fraud Civil Remedies Act) four times, most recently in 2008 (September 23, 2008; 73 FR 54671). An adjustment was not performed in 2012 because the FCPIAA required agencies to round their CMP amounts to the nearest multiple of \$1,000 or \$10,000, depending on the size of the CMP amount, and the 2012 adjustments based on the statutory formula were small enough that no adjustment resulted.

On November 2, 2015, the FCPIAA was amended by the 2015 Improvements Act (Sec. 701, Pub. L. 114-74, 129 Stat. 599). The 2015 Improvements Act requires that the head of each agency through an interim final rulemaking make an initial “catch-up” adjustment of the CMPs assessed under statutes enforced by that agency by July 1, 2016, to be effective no later than August 1, 2016. This initial catch-up adjustment is to be calculated according to the percentage change between the CPI for the month of October 2015 and the CPI for the month of October of the calendar year when the CMP amount was last established by some means other than a FCPIAA adjustment. The increase for the initial catch up adjustment may not exceed 150 percent of the CMP amount as of the date of the enactment of the 2015 Improvements Act. Following the initial catch-up adjustment, agencies must continue to adjust their CMPs by January 15 of each year. This calculation is based on the percentage change between the CPI for the preceding month of October and the CPI for the month of October in the preceding year. All increases under the 2015 Improvements Act are to be rounded to the nearest multiple of one dollar.

II. Discussion

Section 234 of the AEA limits civil penalties for violations of the AEA to \$100,000 per day, per violation (42 U.S.C. 2282). Congress established the \$100,000 amount in 1980 (Pub. L. 96-295, 94 Stat. 787). As discussed in Section I, “Background,” of this document, the NRC

has adjusted this amount (currently set at \$140,000) on four occasions since 1980, each time pursuant to the FCPIAA. For purposes of calculating the initial catch-up adjustment under the 2015 Improvements Act, the relevant baseline year for AEA CMPs is 1980 (the last time the CMP was established by some means other than a FCPIAA adjustment). Using the formula in the 2015 Improvements Act, the \$100,000 amount established in 1980 will increase by 280.469 percent, resulting in a new CMP figure of \$280,469.¹ The 2015 Improvements Act caps the increase in penalty levels for the initial catch-up adjustment at no more than 150 percent of the CMP level in effect as of November 2, 2015, which means the amount of increase for AEA CMPs cannot exceed \$210,000 (150 percent of the current \$140,000 amount). A new CMP amount of \$280,469 is an increase of \$140,469, which is within the limit imposed by the 2015 Improvements Act. Therefore, the NRC is amending § 2.205 of title 10 of the *Code of Federal Regulations* (10 CFR) to reflect a new maximum CMP under the AEA in the amount of \$280,469 per day, per violation.

Monetary penalties under the Program Fraud Civil Remedies Act were established in 1986 at \$5,000 per claim (Pub. L. 99-509, 100 Stat. 1938; 31 U.S.C. 3802). The NRC has adjusted this amount (currently set at \$7,000) multiple times pursuant to the FCPIAA since 1986. Using 1986 as the baseline year, the \$5,000 amount will increase by 215.628 percent, resulting in a new CMP amount of \$10,781. This is a \$3,781 increase from the current \$7,000 CMP amount, which is less than the statutory cap of a \$10,500 increase (150 percent of \$7,000). Therefore, the NRC is amending 10 CFR 13.3 to reflect a new maximum CMP amount of \$10,781 per claim.

¹ This figure is confirmed by guidance from the Office of Management and Budget (OMB) concerning implementation of the 2015 Improvements Act. See OMB M-16-06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Feb. 24, 2016), available at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

As permitted by the 2015 Improvements Act, the NRC may apply these increased CMP amounts to any penalties assessed by the agency after the effective date of this interim final rule (August 1, 2016), regardless of whether the associated violation occurred before or after this date (Pub. L. 114-74, 129 Stat. 600; 28 U.S.C. 2461 note). Conforming changes to the NRC Enforcement Policy (ADAMS Accession No. ML15029A148) will be published in a forthcoming *Federal Register* notice before the effective date of this interim final rule (August 1, 2016).

III. Procedural Background

This interim final rule has been issued without prior public notice or opportunity for public comments. 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 therefore 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 interim final rule is unnecessary. Through the FCPIAA and 2015 Improvements Act, Congress has provided a non-discretionary statutory formula by which the NRC must adjust its CMPs for inflation. Requesting public comment on these CMP adjustments, which are required by statute, would not result in a different amount.

IV. Section-by-Section Analysis

Paragraph (j) in § 2.205 is revised by replacing “\$140,000” with “\$280,469”.

Paragraphs (a)(1)(iv) and (b)(1)(ii) in § 13.3 are revised by replacing “\$7,000” with “\$10,781”.

V. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

VI. Regulatory Analysis

This interim final rule adjusts for inflation the maximum CMPs the NRC may assess under the AEA and under the Program Fraud Civil Remedies Act of 1986. The formula for determining the amount of the adjustment is mandated by Congress in the FCPIAA, as amended by the 2015 Improvements Act (28 U.S.C. 2461 note). Congress passed this 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. Therefore, these are the anticipated impacts of this rulemaking. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement for violations of the AEA and regulations and orders issued under the AEA (10 CFR 2.205), 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).

VII. Backfit and Issue Finality

The NRC has not prepared a backfit analysis for this rulemaking. This interim final rule does not involve any provision that would impose a backfit, nor is it inconsistent with any issue finality provision, as those terms are defined in 10 CFR chapter I. As mandated by Congress, this interim final rule increases CMP amounts for violations of already-existing NRC regulations and requirements. This interim final rule does not modify any licensee system, structures, components, designs, approvals, or procedures required for the design, construction, or operation of any facility.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

IX. National Environmental Policy Act

The NRC has determined that this interim 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 interim final rule.

X. Paperwork Reduction Statement

This interim final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

XI. Congressional Review Act

This interim final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information; Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 13

Administrative practice and procedure, Claims, Fraud, Organization and function (Government agencies), Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; 28 U.S.C. 2461 note; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 13.

PART 2--AGENCY RULES OF PRACTICE AND PROCEDURE

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

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

2. Amend § 2.205 by revising 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 the imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed \$280,469 for each violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purposes 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: 31 U.S.C. 3801 through 3812; 44 U.S.C. 3504 note.

Section 13.3 also issued under 28 U.S.C. 2461 note.

Section 13.13 also issued under 31 U.S.C. 3730.

4. Amend § 13.3 by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 13.3 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 \$10,781 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 \$10,781 for each such statement.

* * * * *

Dated in Rockville, Maryland, this 20 day of June, 2016.

For the Nuclear Regulatory Commission.

/RA/

Victor M. McCree,
Executive Director for Operations.