

## **DOUBLING OF ENFORCEMENT BASE CIVIL PENALTIES**

### **QUESTIONS AND ANSWERS**

Q1. What was the impetus of the change to the civil penalty amounts?

A1. On November 2, 2015, the President signed into law an Act (the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015) that required all Federal agencies to adjust the civil monetary penalties with a “catchup” adjustment so that they maintain a deterrent effect.

Q2. Did the law require that the civil penalty increase for all licensee types?

A2. No, the law only required that agencies adjust civil monetary penalty amounts under statutes and regulations enforced by that agency. For the NRC this meant adjusting the maximum civil penalty the agency can impose under the Atomic Energy Act; the law didn’t specify the licensee type (reactor or material user). As a matter of policy, the NRC imposes the maximum civil penalty amount to nuclear power plants; however, the Commission has approved the use of lesser maximum amounts for other “smaller” types of licensees to maintain the same proportional relationships between the penalties.

The maximum civil penalty amount specified in our regulations (2.205) is the amount that we impose on nuclear power plants for the most severe violation (Severity Level I). Violations that are of lower significance (assessed at lower severity levels) are assessed a lower civil penalty amount.

The NRC’s policy of imposing graduated civil penalties generally takes into account the gravity of the violation as the primary consideration and the ability to pay as a secondary consideration. Thus, operations involving greater nuclear material inventories, significantly higher consequences resulting from a release or exposure to radioactive material, and consequences to the public and workers receive higher civil penalties.

Q3. How much are civil penalties changing for other licensee types besides power reactors?

A3. All civil penalty amounts are doubling except for the loss, abandonment, or improper transfer or disposal of regulated material since these amounts are determined by the estimate or actual cost of authorized disposal.

Q4. When does the new law take effect?

A4. August 1, 2016. The law required that the new maximum penalty take effect no later than August 1, 2016.

Q5. Is the civil penalty based on the date that the violation occurred?

A5. No, the law requires that the new civil penalty amount will apply to any penalties assessed on and after August 1, 2016, regardless of whether the violation occurred before that date. The civil penalty will no longer be based on the date that the violation occurred.

Q6. Why is the NRC not imposing the maximum allowed (\$280,469) required by law?

A6. The staff believes that this slightly lower value would still be an effective deterrent and would save staff resources by minimizing the need to make annual changes to the Enforcement Policy and Manual alongside our regulation (10 CFR 2.205), for minor increases in inflation.

Q7. How frequently will the civil penalty amounts be adjusted?

A7. The law requires that our regulation (10 CFR 2.205) be adjusted on an annual basis beginning in January of 2017. However, since the Commission approved truncating the amount to the nearest \$10,000, the Enforcement Policy may not need to be revised annually. Prior to the recent law being enacted, the Act required that the head of each agency review, and if necessary adjust by regulation, the CMPs assessed under statutes enforced by the agency at least once every 4 years.

Q8. Where can we go to see the civil penalty amounts for all licensee types?

A8. Table A and Table B in Section 8.0 of the Enforcement Policy lists the civil penalty amount for the various types of licensees. The Enforcement Policy is located on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

Q9. How many times has the NRC adjusted the civil penalty amounts?

A9. The NRC amended the civil penalty amounts four times, the last Policy adjustment was on October 23, 2008, raising it from \$130,000 to \$140,000. No adjustment was necessary in 2012 since the adjustment based on the statutory formula was small enough that no adjustment was required. The law had previously required that the agency review, and if necessary adjust by regulation, the CMPs assessed under statutes enforced by the agency at least once every 4 years.

Q10. How was the "catch-up" adjustment calculated?

A10. The Catch-up adjustments was calculated using the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year of the previous adjustment, and the October 2015 CPI-U. For the purpose of AEA CMP, the year in which this amount was last established was 1980.

Q11. How will the annual adjustments be calculated?

A11. Annual inflation adjustments will be based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year's October CPI-U. For example, the next inflation adjustment that will occur in January 2017 will be based on the CPI-U percent change between October 2015 and October 2016.

Q12. How many times has the NRC imposed the maximum civil penalty to a licensee? Is this a common practice?

A12. Although it is not a frequent occurrence, the NRC has imposed the maximum civil penalty to a licensee on multiple occasions; the last time being in April 2005 (Davis Besse for the Circumferential Cracking of the Pressure vessel Head Penetration Nozzles). The NRC imposes the maximum civil penalty amount for the most severe violation (Severity Level I).