

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC-2016-0134]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to its Enforcement Policy (Enforcement Policy or Policy) to reflect the new maximum civil penalty amount the agency can assess for a violation of the Atomic Energy Act of 1954, as amended (AEA), or any regulation or order issued under the AEA. By interim final rule, the NRC changed this amount from \$140,000 to \$280,469 per violation per day, as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Improvements Act). This action revises the Enforcement Policy so that dollar amounts in the policy correspond to the agency's revised civil penalty amount, and also provides guidance regarding instances where the NRC may exercise discretion in mitigating the amount of a civil penalty.

DATES: This revision to the Enforcement Policy is effective on August 1, 2016. The Commission will apply the revised Enforcement Policy to any penalties assessed on and after the effective date; the penalty is not based on the date that the violation occurs.

ADDRESSES: Please refer to Docket ID NRC-2016-0134 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0134. 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 <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 in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The revised Enforcement Policy is available in ADAMS under Accession No. ML16197A561, and on the NRC’s public Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

- **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: Russell Arrighi, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, telephone: 301-415-0205, e-mail: Russell.Arrighi@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the 2015 Improvements Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) and required all agencies to adjust for inflation their levels of civil monetary penalties via rulemaking by July 1, 2016, to be effective no later than August 1, 2016. In an interim final rule published in the Rules and Regulations section of the *Federal Register* (81 FR 43019; July 1, 2016), the NRC is amending its regulations to implement the 2015 Improvements Act by adjusting the amount in § 2.205(j) of Title 10 of the *Code of Federal Regulations* (10 CFR), according to a statutory formula based on the Consumer Price Index (CPI), from \$140,000 to \$280,469. This amount represents the new maximum civil penalty that the NRC may impose for a violation of the AEA, or any regulation or order issued under the AEA, per violation per day. Starting in January 2017, the 2015 Improvements Act also requires that the NRC make annual inflation adjustments to the maximum civil penalty amount in 10 CFR 2.205, rounded to the nearest multiple of \$1.

To incorporate the updated maximum civil penalty amount specified in its regulations, the NRC is issuing a revision to its Enforcement Policy (ADAMS Accession No. ML16197A561). Specifically, the NRC is updating Table A in Section 8.0, "Table of Base Civil Penalties," which currently lists \$140,000 as the maximum civil penalty amount the agency may assess for the most significant severity level of violation. To promote regulatory certainty and save NRC staff resources by lessening the chances that the Enforcement Policy will have to be revised on an annual basis alongside 10 CFR 2.205 resulting from minor increases in inflation (less than one half percent), the maximum civil penalty amount in the revised Table A will be calculated by rounding the maximum civil penalty amount in 10 CFR 2.205 down to the nearest multiple of \$10,000 (assuming the amount in 10 CFR 2.205 is not already a multiple of \$10,000). Therefore, the new maximum civil penalty in Table A is now \$280,000, rounded down from

\$280,469. The 2015 Improvements Act does not limit the Commission's authority to exercise discretion and assess civil penalty levels below the statutory maximum, and the gains to be realized from a more stable table of base civil penalties outweighs any arguable loss of deterrent effect from rounding this maximum figure down, at most, \$9,999 in a given year. Additionally (and as stated in the Preface to the Enforcement Policy), this is a statement of policy, not regulation, and the Commission still reserves the right to deviate from the Enforcement Policy where particular circumstances warrant and assess the full statutory maximum.

The revised Table A in Section 8.0 of the Enforcement Policy also now includes a note explaining how the table's maximum civil penalty amount is generated as a result of rounding down from the number in 10 CFR 2.205. The note also explains that other amounts listed in the table have been adjusted to maintain the same proportional relationship between penalties. The revised table also now includes a footnote explaining that the maximum civil penalty is adjusted on an annual basis to put the regulated community on notice that the NRC may periodically update the amount in 10 CFR 2.205 pursuant to the 2015 Improvements Act, which would necessitate a change to the amounts in Table A in Section 8.0 of the Enforcement Policy. In the event of such an update, the NRC may assess civil penalties consistent with the updated amount in 10 CFR 2.205 even if it has not yet performed an update to Table A (though the NRC will strive to provide timely updates of the Enforcement Policy when necessitated by updates to 10 CFR 2.205). Additionally, as stated in Section 6 of the FCPIAA (28 U.S.C. 2461 note), when the NRC increases civil penalty amounts through rulemaking pursuant to the 2015 Improvements Act, it will apply those increased amounts when assessing any penalty after the effective date of that rulemaking, regardless of whether the underlying violation occurred before that effective date.

The NRC is not adjusting the civil penalty amounts in Table A for the "loss, abandonment, or improper transfer of disposal of regulated material, regardless of the use or

type of licensee,” other than to note that these values will be periodically reviewed and updated, since these civil penalty amounts are determined by the estimated or actual cost of authorized disposal.

Lastly, because the agency’s authority to issue civil penalties for violations of the AEA has more than doubled as a result of the 2015 Improvements Act, the NRC is also including new language in Section 3.6 of the Enforcement Policy, “Use of Discretion in Determining the Amount of a Civil Penalty,” to confirm that, notwithstanding the outcome of the normal civil penalty process, the agency may take into account mitigating factors based on the merits of an individual case, including the ability of various classes of licensees to pay. It is not the NRC’s intention that the economic impact of a civil penalty be so severe that it adversely affects a licensee’s ability to safely conduct licensed activities or puts a licensee out of business. Section 3.6 now allows NRC staff to consider enforcement discretion for cases where there is a concern that imposition of a base civil penalty would be overly punitive rather than a deterrent for the individual or licensee.

II. Congressional Review Act

This policy statement 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.

Dated at Rockville, Maryland, this 6th day of July, 2016.

For the Nuclear Regulatory Commission.

/RA/

Andrew L. Bates, Acting,
Secretary of the Commission.