

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 13

[NRC-2021-0025]

RIN 3150-AK59

Adjustment of Civil Penalties for Inflation for Fiscal Year 2023

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum civil monetary penalties it can assess under statutes enforced by the agency. These changes are mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The NRC is amending its regulations to adjust the maximum civil monetary penalty for a violation of the Atomic Energy Act of 1954, as amended, or any regulation or order issued under the Atomic Energy Act from \$326,163 to \$351,424 per violation, per day. Additionally, the NRC is amending provisions concerning program fraud civil penalties by adjusting the maximum civil monetary penalty under the Program Fraud Civil Remedies Act from \$12,537 to \$13,508 for each false claim or statement.

DATES: This final rule is effective on January 13, 2023.

ADDRESSES: Please refer to Docket ID **NRC-2021-0025** 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 Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0025. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@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 <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, 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, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carrie McCann, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-0888; email: Carrie.McCann@nrc.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) to allow for regular adjustment for inflation of civil monetary penalties (CMPs), maintain the deterrent effect of such 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). Pursuant to this authority, and as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-34, 110 Stat. 1321-373), the NRC increased via rulemaking the CMP amounts for violations of the Atomic Energy Act of 1954, as amended (AEA) (codified at § 2.205 of Title 10 of the *Code of Federal Regulations* (10 CFR), “Civil penalties”) and Program Fraud Civil Remedies Act (codified at § 13.3, “Civil penalties and assessments”) on four occasions between 1996 and 2008.¹

¹ Adjustment of Civil Penalties for Inflation (73 FR 54671; Sept. 23, 2008); Adjustment of Civil Penalties for Inflation (69 FR 62393; Oct. 26, 2004); Adjustment of Civil Penalties for Inflation; Miscellaneous Administrative Changes (65 FR 59270; Oct. 4, 2000); Adjustment of Civil Monetary Penalties for Inflation (61 FR 53554; Oct. 11, 1996). An adjustment was not performed in 2012 because the FCPIAA at the time required agencies to round their CMP amounts to the nearest multiple of \$1,000 or \$10,000, depending on

On November 2, 2015, Congress amended the FCPIAA through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Improvements Act) (Sec. 701, Pub. L. 114-74, 129 Stat. 599). The 2015 Improvements Act required that the head of each agency perform an initial “catch-up” adjustment via rulemaking, adjusting the CMPs enforced by that agency according to the percentage change in the Consumer Price Index (CPI) between the month of October 2015 and the month of October of the calendar year when the CMP amount was last established by Congress. The NRC published this catch-up rulemaking on July 1, 2016 (81 FR 43019).

The 2015 Improvements Act also requires that the head of each agency continue to adjust CMP amounts, rounded to the nearest dollar, on an annual basis. Specifically, each CMP is to be adjusted based on the percentage change between the CPI for the month of October, and the CPI for the month of October for the previous year. The NRC most recently adjusted its civil penalties for inflation according to this statutory formula on January 14, 2022 (87 FR 2310). This year’s adjustment is based on the increase in the CPI from October 2021 to October 2022.

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). However, as discussed in Section I, “Background,” of this document, the NRC has increased this amount several times since 1996 per the FCPIAA, as amended. Using the formula in the 2015 Improvements Act, the \$326,163 amount last established in January 2022 will increase by 7.745 percent, resulting in a new CMP amount of \$351,424. This is based on the increase in the CPI

the size of the CMP amount, and the 2012 percentages based on the statutory formula were small enough that no adjustment resulted.

from October 2021 (276.589) to October 2022 (298.012). Therefore, the NRC is amending § 2.205 to reflect a new maximum CMP under the AEA in the amount of \$351,424 per day, per violation. This represents an increase of \$25,261.

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 also has adjusted this amount (currently set at \$12,537) multiple times pursuant to the FCPIAA, as amended, since 1996. Using the formula in the 2015 Improvements Act, the \$12,537 amount last established in January 2022 will also increase by 7.745 percent, resulting in a new CMP amount of \$13,508. Therefore, the NRC is amending § 13.3 to reflect a new maximum CMP amount of \$13,508 per claim or statement. This represents an increase of \$971.

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 final rule (January 13, 2023), 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). The NRC assesses civil penalty amounts for violations of the AEA based on the class of licensee and severity of the violation, in accordance with the NRC Enforcement Policy, which is available under ADAMS Accession No. ML22336A179. A corresponding update to the NRC Enforcement Policy is being published today in the Rules section of the *Federal Register* to reflect the updated CMP amount in § 2.205.

III. Rulemaking Procedure

The 2015 Improvements Act expressly exempts this final rule from the notice and comment requirements of the Administrative Procedure Act by directing agencies to adjust CMPs for inflation “notwithstanding section 553 of title 5, United States Code”

(Pub. L. 114-74, 129 Stat. 599; 28 U.S.C. 2461 note). As such, this final rule is being issued without prior public notice or opportunity for public comment, with an effective date of January 13, 2023.

IV. Section-by-Section Analysis

§ 2.205 Civil penalties.

This final rule revises paragraph (j) by replacing “\$326,163” with “\$351,424.”

§13.3 Basis for civil penalties and assessments.

This final rule revises paragraphs (a)(1)(iv) and (b)(1)(ii) by replacing “\$12,537” with “\$13,508.”

V. Regulatory Analysis

This 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 (codified at 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 diminishes 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 (§ 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).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to regulations for which a Federal agency is not required by law, including the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C 553(b), to publish a general notice of proposed rulemaking (5 U.S.C. 604). As discussed in this notice under Section III, "Rulemaking Procedure," of this document, this final rule is exempt from the requirements of 5 U.S.C. 553(b) and notice and comment need not be provided. Accordingly, the NRC also determines that the requirements of the Regulatory Flexibility Act do not apply to this final rule.

VII. Backfit and Issue Finality

The NRC has not prepared a backfit analysis for this final rule. This 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 final rule increases CMP amounts for violations of already-existing NRC regulations and requirements. This final rule does not modify any licensee systems, structures, components, designs, approvals, or procedures required for the 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 31885).

IX. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described as a categorical exclusion in § 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

X. Paperwork Reduction Act

This 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 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 continues 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.

§ 2.205 [Amended]

2. In § 2.205, amend paragraph (j) by removing the amount “\$326,163” and adding in its place the amount “\$351,424”.

PART 13--PROGRAM FRAUD CIVIL REMEDIES

3. The authority citation for part 13 continues 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.

§ 13.3 [Amended]

4. In § 13.3, amend paragraphs (a)(1)(iv) and (b)(1)(ii) by removing the amount “\$12,537” and adding in its place the amount “\$13,508”.

Dated: December 21, 2022.

For the Nuclear Regulatory Commission.

/RA/

Daniel H. Dorman
Executive Director for Operations.