

RULEMAKING ISSUE
AFFIRMATION

SECY-00-0179

August 23, 2000

FOR: The Commissioners
FROM: William D. Travers
Executive Director for Operations
SUBJECT: FINAL RULE: "ADJUSTMENT OF CIVIL MONETARY PENALTIES"; PROPOSED REVISION TO THE ENFORCEMENT POLICY TO CONFORM TO THE FINAL RULE ADJUSTING CIVIL MONETARY PENALTIES AND MINOR ADMINISTRATIVE CHANGES TO PARTS 1 AND 13

- PURPOSE:
- BACKGROUND:
- DISCUSSION:
 - A. Change to Civil Penalty Regulations.
 - B. Change to Enforcement Policy To Reflect Civil Penalty Adjustments.
 - C. Changes to Program Fraud Civil Remedies Act Regulations.
 - D. Change to 10 CFR Part 1.
- ISSUANCE OF FINAL RULE:
- COORDINATION:
- RESOURCES:
- RECOMMENDATIONS:

PURPOSE:

To request Commission approval of a final rule ([Attachment 1](#)) amending NRC regulations by adjusting the statutory and regulatory maximum civil monetary penalties (CMPs) for regulatory violations and violations of the Program Fraud Civil Remedies Act. To request Commission approval of conforming changes that will be made to the NRC's Enforcement Policy ([Attachment 2](#)). To request Commission approval for two minor administrative changes affecting OGC practices and procedures.

BACKGROUND:

Section 234 of the Atomic Energy Act (AEA) limits the maximum civil penalty amount that the NRC may issue for violations of the AEA at \$100,000 per violation, per day. The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996, requires that the head of each agency adjust by regulation the civil monetary penalties (CMPs) within the jurisdiction of the agency for inflation at least once every four years. On November 12, 1996, the NRC adjusted the aforementioned maximum civil penalty amount to \$110,000. Thus, the NRC is required to adjust this civil penalty by November 12, 2000.

DISCUSSION:

A. Change to Civil Penalty Regulations.

This final rule ([Attachment 1](#)) amends [10 CFR 2.205](#) by adjusting the maximum civil penalty per violation under the AEA of 1954, as amended, from \$110,000 to \$120,000. The rule will become effective 30 days from publication in the *Federal Register*.

The amount of the adjusted maximum civil penalties must be calculated in accordance with a formula mandated by statute. The inflation adjustment mandated by the Act results in a six percent increase to the maximum CMPs. 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. After this mandatory adjustment for inflation and the rounding mandated by the statute, the new maximum civil penalty amount will be \$120,000 per violation, per day. The new maximum civil penalty applies only to violations that occur after the date that the increase takes effect.

B. Change to Enforcement Policy To Reflect Civil Penalty Adjustments.

The changes mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, apply to the maximum CMP. This is also the amount that, under the Enforcement Policy approved by the Commission, is assigned as the base civil penalty for power reactors and gaseous diffusion plants for a Severity Level I violation. As a matter of policy, the Commission has approved use of lesser amounts for other types of licensees, primarily materials licensees, and for violations that are assessed at lower severity levels. This approach is set out in Tables 1A and 1B of the Enforcement Policy. While the 1996 Act does not mandate changes to these lesser civil penalty amounts, the staff

recommends modifying Table 1A of the Enforcement Policy by increasing each amount to maintain the same proportional relationships between the penalties. For example, the civil penalty for fuel fabricators authorized to possess Category I or II quantities of special nuclear material should be increased from \$55,000 to \$60,000 to maintain its relationship as one half of the amount of the civil penalty for power reactors (\$120,000). These changes, applying to violations occurring after the effective date of this Policy Statement, are set forth in the attached *Federal Register* notice ([Attachment 2](#)).

C. Changes to Program Fraud Civil Remedies Act Regulations.

This final rule ([Attachment 1](#)) also amends [10 CFR 13.3\(a\)\(1\)](#) and [\(b\)\(1\)](#) by adjusting the civil monetary penalty for violations of the Program Fraud Civil Remedies Act from \$5,500 to \$6,000. The inflation adjustment mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, results in a six percent increase to the maximum CMPs for each false statement or claim under the Program Fraud Civil Remedies Act. Increases are to be rounded to the nearest multiple of \$1,000 in the case of penalties greater than \$1,000 but less than \$10,000. After this mandatory adjustment for inflation and the rounding mandated by the statute, the new maximum civil penalty amount for each violation of the Program Fraud Civil Remedies Act will be \$6,000. The new maximum civil penalty applies only to violations that occur after the date that this final rule takes effect.

Under the Program Fraud Civil Remedies Act, the NRC is required to designate a "reviewing official" responsible, in part, for determining whether there is adequate evidence against an individual to warrant commencement of an administrative proceeding. The current rule designates the Deputy General Counsel for Licensing and Regulation as the reviewing official for purposes of the Program Fraud Civil Remedies Act. Although that position no longer exists as such, the role of reviewing official has been performed by the General Counsel or Deputy General Counsel since 1994. The proposed designation of the General Counsel to serve as reviewing official is consistent with the original delegation to have OGC perform this role and ensures that the rule is not sensitive to changes in OGC structure. As requested by OGC, this final rule ([Attachment 1](#)) amends the designation of "reviewing official" to mean the General Counsel of the NRC or his or her designee.

D. Change to 10 CFR Part 1.

In [10 CFR Part 1](#), the functions of each NRC office are described. As requested by OGC, this final rule ([Attachment 1](#)) would make a minor modification to the language of [10 CFR 1.23\(e\)](#) to reflect long-standing OGC practice of only providing legal advice to NRC staff upon request on agency procurement matters, rather than preparing or concurring in all NRC contracts and interagency agreements to acquire supplies and services.

ISSUANCE OF FINAL RULE:

This final rule would be issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require that an agency 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, for good cause, solicitation of public comment on this final rule is unnecessary and impractical. Congress has required that the agency adjust the CMPs within the jurisdiction of the agency for inflation at least once every four years, and provided no discretion to the agency regarding the substance of the amendments. All that is required of the NRC for determination of the inflation adjustment are ministerial computations. Changes to the designation of reviewing official under the Program Fraud Civil Remedies Act and the description of OGC functions are routine matters of agency organization, procedure, or practice exempt from the requirement for public notice and comment.

COORDINATION:

The Office of the General Counsel supports these proposals. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Office of the Chief Information Officer has reviewed this paper for information technology and information management implications and concurs in it.

RESOURCES:

No additional resources are required to implement the Final Rule ([Attachment 1](#)). The resources required to implement the revised Enforcement Policy are available within the Fiscal Year 2001 Budget Estimates and Performance Plan. No additional resources are required.

RECOMMENDATIONS:

That the Commission:

1. Approve the "Final Rule" ([Attachment 1](#)) for publication in the *Federal Register*.
2. Approve publication of the revised Enforcement Policy ([Attachment 2](#)) in the *Federal Register*.
3. Note:

- a. Staff will request that the Office of the Federal Register publish the Notice of Final Rulemaking and Notice of Change to the Enforcement Policy the same day in the Federal Register.
- b. The final rule adjusting civil monetary penalties within the jurisdiction of the agency and making minor administrative changes to OGC practice and procedures will become effective 30 days from publication in the *Federal Register*. This rule should be published to ensure effectiveness by November 12, 2000.
- c. This rule will be published without notice and comment.
- d. The revision of the Enforcement Policy will become effective 30 days from publication of the final rule.
- e. The appropriate Congressional Committees will be notified.
- f. A press release will be issued by the Office of Public Affairs following Commission action.
- g. The change to the Enforcement Policy does not impact information collections that are subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).
- h. The staff has determined that these are not "major" rules as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2).
- i. The Office of Enforcement's website will be updated. Necessary changes to the Enforcement Manual will also be made.

/RA by Frank J. Miraglia Acting For/

William D. Travers
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Attachments: 1. [Draft Final *Federal Register* Notice adjusting civil monetary penalties and amending miscellaneous administrative practices.](#)
2. [Draft Final *Federal Register* Notice implementing conforming changes in Enforcement Policy.](#)

ATTACHMENT 1

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2 and 13

RIN 3150-AG59

**Adjustment of Civil Penalties for Inflation
Miscellaneous Administrative Changes**

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 adding a provision that adjusts the maximum CMP for a violation of the Atomic Energy Act (AEA) or any regulations or order issued thereunder from \$110,000 to \$120,000 per violation per day. The provisions concerning program fraud civil penalties are amended by adjusting the maximum civil penalties under the Program Fraud Civil Remedies Act from \$5,500 to \$6,000 for each false claim or statement. This final rule also amends the designation

of the term "Reviewing official" for the purposes of the Program Fraud Civil Remedies Act to reflect a reorganization in the Office of the General Counsel (OGC) as well as making a minor modification to NRC regulations to reflect OGC's role in providing legal advice to NRC staff upon request on agency procurement matters.

DATES: The rule shall be effective on [insert 30 days after date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Norman St. Amour, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone (301) 415-1589; e-mail NXS1@nrc.gov.

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I. Background

A. Civil Penalty Adjustment.

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 12, 1996. Thus, this inflation adjustment must be implemented by November 12, 2000.

The inflation adjustment is to be determined by increasing the maximum CMPs or the range of the minimum and maximum CMPs, as applicable, 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 set. For the purposes of this adjustment, applying this formula results in a six percent increase to the 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.

B. Miscellaneous Administrative Changes.

Under the Program Fraud Civil Remedies Act, the NRC is required to designate a "reviewing official." The reviewing official has several duties under the Act, including making the determination as to whether there is adequate evidence against an individual to warrant commencement of an administrative proceeding.

Under the Commission's original rules implementing the Act, the Deputy General Counsel for Licensing and Regulation, or his or her designee, is identified as the reviewing official for the purposes of the Program Fraud Civil Remedies Act. 10 C.F.R. § 13.2 (2000). Because the position of Deputy General Counsel for Licensing and Regulation does not exist as such in the Office of the General Counsel, the Commission is designating the General Counsel as the "reviewing official." The General Counsel may delegate this authority.

This final rule would also make a minor modification to the language of 10 CFR 1.23(e). This modification reflects the Office of General Counsel's long-standing practice of providing legal advice and opinions to NRC staff on procurement matters in response to specific requests from contracting offices and other interested agency offices, rather than preparing or concurring in all NRC contracts and interagency agreements to acquire supplies and services.

II. Discussion

Section 234 of the AEA has limited civil penalties for violations of the Atomic Energy Act to \$100,000 per day per violation. In 1996, pursuant to 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, the NRC is required to adjust the CMPs within its jurisdiction this year. After this mandatory adjustment for inflation, the new CMP penalty amount for a violation of the AEA will be \$120,000 per day per violation (rounding the amount of the inflation adjustment increase to the nearest multiple of \$10,000). Thus, by regulation, the NRC has amended 10 CFR 2.205 to reflect a new maximum CMP under the AEA in the amount of \$120,000 per day per violation. This new 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 U.S.C. 3801, 3802, and the NRC's implementing regulations, 10 CFR 13.3(a)(1) and (b)(1), are currently limited to \$5,500. As adjusted for inflation, the penalty amount will be \$6,000. Thus, NRC has amended 13.3(a)(1) and (b)(1) by increasing the maximum CMP for each false statement or claim under the Program Fraud Civil Remedies Act from \$5,500 to \$6,000. Again, this new maximum CMP applies only to violations which occur after the effective date of this regulation.

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

The Program Fraud Civil Remedies Act "reviewing official" in 10 CFR 13.2 currently means the Deputy General Counsel for Licensing and Regulation of the NRC or his or her designee. This position does not exist in the current OGC organization. Accordingly, the Commission is amending the designation of "reviewing official" to mean the General Counsel of the NRC or his or her designee.

This final rule would also make a minor modification to the language of 10 CFR 1.23(e). The existing language implies that OGC provides legal advice and opinions on all agency procurement matters. This modification reflects OGC's long-standing practice of providing legal advice and opinions to NRC staff on procurement matters only in response to specific requests from contracting offices and other interested offices, rather than preparing or concurring in all NRC contracts and interagency agreements to acquire supplies and services.

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 that an agency 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 that the agency adjust the CMPs within the jurisdiction of the agency for inflation at least once every four years, and provided no discretion to the agency regarding the substance of the amendments. All that is required of the NRC for determination of the inflation adjustment are ministerial computations. The NRC also finds that amending the designation of reviewing official under the Program Fraud Civil Remedies Act and the minor modification to reflect OGC's actual long-standing practice of providing legal advice to NRC staff on procurement matters upon request are routine matters of agency organization, procedure, or practice exempt from the requirement for public notice and comment .

IV. 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 51.22(c)(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 and amends the definition of "reviewing official" for Program Fraud Civil Remedies Act matters to reflect a reorganization in the Office of the General Counsel and incorporates a minor modification to the language of 10 CFR 1.23(e) to reflect actual long-standing OGC practice in providing legal advice to NRC staff, upon request, on agency procurement matters.

V. 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.).

VI. Regulatory Analysis

This final rule adjusts for inflation the maximum civil penalties under the Atomic Energy Act of 1954, as amended, and under the Program Fraud Civil Remedies Act of 1986. The adjustments and the formula for determining the amount of the adjustment are mandated by Congress in the Federal Civil Penalties Act of 1990, as amended by the Debt Collection Improvement Act of 1996, as amended (Pub. L. No. 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 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). This final rule also makes an adjustment to the designation of "reviewing official" for Program Fraud Civil Remedies Act matters to reflect an Office of the General Counsel reorganization and incorporates a minor modification to the language of 10 CFR 1.23(e) to reflect OGC's long-standing practice of providing legal advice and opinions to NRC staff on procurement matters in response to specific requests from contracting offices and other interested agency offices, rather than preparing or concurring in all NRC contracts and interagency agreements to acquire supplies and services.

VII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking adjusts, for inflation, the amount charged for civil penalties, as required by the Debt Collection Improvement Act. The law mandates that adjustments for inflation be made at least every four years and sets forth a formula for determining the amount of the adjustment. The Nuclear Regulatory Commission has no discretion in implementing these requirements. To the extent that small entities are impacted by this rule, these are anticipated impacts resulting from the mandatory provisions of the legislation authorized by Congress.

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. National Technology Transfer and Advancement Act

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.

X. Backfit Analysis

The NRC has determined that these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1); therefore, a backfit analysis need not be prepared.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

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.

10 CFR Part 13

Claims, Fraud, Organization and function (government agencies), Penalties.

For the reasons set out above and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Civil Penalties Adjustment Act of 1990, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 1, 2 and 13.

PART 1-- STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85-256, 71 Stat. 579, Pub. L. 95-209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552,

553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In section 1.23 paragraph (e) is revised to read as follows:

§ 1.23 Office of the General Counsel.

* * * * *

(e) As requested, provides the agency with legal advice and opinions on acquisition matters, including agency procurement contracts; placement of work at Department of Energy national laboratories; interagency agreements to acquire supplies and services; and grants and cooperative agreements. Prepares or concurs in all other interagency agreements, delegations of authority, regulations; orders; licenses; and other legal documents and prepares legal interpretations thereof;

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

3. 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.

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. 10134(f)); 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). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 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). Sections 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5. U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 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). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

4. In section 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 \$120,000 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.

PART 13-PROGRAM FRAUD CIVIL REMEDIES

5. The authority citation for Part 13 is revised to read as follows:

AUTHORITY: Public Law 99-509, sec 6101-6104, 100 Stat. 1874 (31 U.S.C. 3801-3812). Sections 13.13(a) and (b) also issued under Pub. L. 101-410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note).

6. In section 13.2 the definition of "Reviewing official" is revised to read as follows:

§ 13.2 Definitions.

* * * * *

Reviewing official means the General Counsel of the Nuclear Regulatory Commission or his or her designee who is --

- (a) Not subject to supervision by, or required to report to, the investigating official;
- (b) Not employed in the organizational unit of the authority in which the investigating official is employed; and
- (c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

* * * * *

7. In section 13.3, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 13.3 Basis for civil penalties and assessments.

(a) Claims.

(1) Any person who makes a claim that the person knows or has reason to know--

- (i) Is false, fictitious, or fraudulent;
- (ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
- (iii) Includes or is supported by any written statement that--

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(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 \$6,000 for each such claim.

* * * * *

(b) Statements.

(1) Any person who makes a written statement that--

(i) The person knows or has reason to know--

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(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 \$6,000 for each such statement.

* * * * *

Dated at Rockville, Maryland, this ____ day of _____, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission

ATTACHMENT 2

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NUREG - 1600]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement:revision.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is publishing a revision to its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG-1600) (Enforcement Policy or Policy) to address the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The Act requires Federal agencies to adjust civil monetary penalties to reflect inflation.

DATES: This action is effective on [insert 30 days after the date of publication of an associated final rule in the *Federal Register*]. Comments on this revision should be submitted on or before [insert 30 days after date of effectiveness] and will be considered by the NRC before the next Enforcement Policy revision. The Commission will apply the modified Policy to violations that occur after the effective date.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: Room T6D22, 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room 2120 L Street, NW. (Lower Level), Washington, DC, and through the NRC Agencywide Documents Access and Management System (ADAMS). Comments may also be sent electronically by completing the online comment form available on the NRC's Office of Enforcement Internet webpage at </about-nrc/regulatory/enforcement/contact-oe.html>.

The NRC's Office of Enforcement maintains the current policy statement on its homepage on the Internet at </about-nrc/regulatory/enforcement.html>.

FOR FURTHER INFORMATION CONTACT: Bill Borchardt, Director, Office of Enforcement, (301) 415-2741, e-mail rwb1@nrc.gov or Renée Pedersen, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, (301) 415-2742, e-mail rmp@nrc.gov.

SUPPLEMENTARY INFORMATION:

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Section 234 of the Atomic Energy Act (AEA) limits the maximum civil penalty amount that the NRC may issue for violations of the AEA at \$100,000 per violation, per day. The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (as amended by the Debt Collection Improvement Act of 1996 (the Act)) requires that the head of each agency adjust by regulation the civil monetary penalties (CMPs) provided by law within the jurisdiction of the agency for inflation at least once every four years. On November 12, 1996, the NRC adjusted the aforementioned maximum civil penalty amount to \$110,000. Thus, the NRC is required to adjust this civil penalty by November 12, 2000.

The inflation adjustment mandated by the Act results in a six percent increase to the maximum CMPs. ⁽¹⁾ 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.

After this mandatory adjustment for inflation and the rounding mandated by statute, the new maximum civil penalty amount will be \$120,000 per violation, per day. Concurrent with this change, the NRC is publishing in the *Federal Register*, a change to 10 CFR 2.205 to reflect the new maximum CMP mandated by the Act. The new maximum civil penalty applies only to violations that occur after the date that the increase takes effect.

The changes mandated by the Act apply to the maximum CMP. This is also the amount that, under the Enforcement Policy approved by the Commission, is assigned as the base civil penalty for power reactors and gaseous diffusion plants for a Severity Level I violation (considered the most significant severity level). Also as a matter of policy, the Commission has approved use of lesser amounts for other types of licensees, primarily materials licensees, and for violations that are assessed at lower severity levels. This approach is set out in Tables 1A and 1B of the Enforcement Policy. While the 1996 Act does not mandate changes to these lesser civil penalty amounts, the NRC is modifying Table 1A of the Enforcement Policy by increasing each amount to maintain the same proportional relationships between the penalties. These changes apply to violations occurring after the effective date of this Policy Statement.

Paperwork Reduction Act

This final policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

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, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is revised to read as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

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VI. DISPOSITION OF VIOLATIONS

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C. Civil Penalty

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1. Base Civil Penalty

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TABLE 1A--BASE CIVIL PENALTIES

a.	Power reactors and gaseous diffusion plants	\$120,000
b.	Fuel fabricators authorized to possess Category I or II quantities of SNM	\$60,000
c.	Fuel fabricators, industrial processors, ¹ and independent spent fuel and monitored retrievable storage installations	\$30,000
d.	Test reactors, mills and uranium conversion facilities, contractors, waste disposal licensees, industrial radiographers, and other large material users	\$12,000
e.	Research reactors, academic, medical, or other small material users ²	\$6,000

¹ Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

² This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

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2. Civil Penalty Assessment

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d. Exercise of Discretion

As provided in Section VII, "Exercise of Discretion," discretion may be exercised by either escalating or mitigating the amount

of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects all relevant circumstances of the particular case. However, in no instance will a civil penalty for any one violation exceed \$120,000 per day.

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VII. EXERCISE OF DISCRETION

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A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. The NRC also considers violations associated with findings that the Reactor Oversight Process's Significance Determination Process evaluates as having low to moderate, or greater safety significance (i.e., white, yellow, or red) to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include: (1) escalating civil penalties; (2) issuing appropriate orders; and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$120,000 per violation, per day.

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3. Daily Civil Penalties

In order to recognize the added significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of \$120,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware of or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

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Dated at Rockville, Maryland, this ____ day of _____, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

1. Adjustment for inflation = Consumer Price Index (CPI) for June 1999 - CPI for June 1996.