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[7590-01-P]

## NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 13

[NRC-2016-0165]

RIN 3150-AJ82

### Adjustment of Civil Penalties for Inflation for FY 2017

**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 (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 \$280,469 to \$285,057 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 \$10,781 to \$10,957 for each false claim or statement.

**DATES:** This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Please refer to Docket ID NRC-2016-0165 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-2016-0165. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: [Carol.Gallagher@nrc.gov](mailto: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](mailto: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](mailto: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 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). The Debt Collection Improvement Act of 1996 amended the FCPIAA to require the head of each agency to 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. 104-34, 110 Stat. 1321-373). Pursuant to this authority, the NRC increased the CMP amounts for violations of the AEA (codified at § 2.205 of title 10 of the *Code of Federal*

*Regulations* (10 CFR)) and Program Fraud Civil Remedies Act (codified at 10 CFR 13.3) on four occasions between 1996 and 2008.<sup>1</sup>

On November 2, 2015, Congress amended the FCPIAA through the 2015 Improvements Act (Sec. 701, Pub. L. 114-74, 129 Stat. 599). The 2015 Improvements Act required that the head of each agency perform a “catch-up” adjustment by rulemaking, not later than July 1, 2016, adjusting the CMPs within the jurisdiction of that agency according to the percentage change in the CPI between the month of October 2015 and October of the calendar year when the CMP amount was last established by Congress. The NRC performed this rulemaking on July 1, 2016 (81 FR 43019), increasing the amounts codified at 10 CFR 2.205 and 10 CFR 13.3 to \$280,469 and \$10,781, respectively.

The 2015 Improvements Act also requires that the head of each agency continue to adjust CMP amounts, rounded to the nearest dollar, each year thereafter. Specifically, each CMP is to be adjusted based on the percentage change between the CPI for the previous month of October, and the CPI for the month of October in the year preceding that. Therefore, the CMP adjustment required to be performed in 2017 is to be based on the percentage change between the CPI for the month of October 2016 and October 2015.

## **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 the Background section of this document, the NRC has increased this amount several times since 1996 under the FCPIAA, as amended. Using the formula in the 2015 Improvements Act, the \$280,469 amount last

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<sup>1</sup> Adjustment of Civil Penalties for Inflation, 73 FR 54671 (September 23, 2008); Adjustment of Civil Penalties for Inflation, 69 FR 62393 (October 26, 2004); Adjustment of Civil Penalties for Inflation; Miscellaneous Administrative Changes, 65 FR 59270 (October 4, 2000); Adjustment of Civil Monetary Penalties for Inflation, 61 FR 53554 (October 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 the size of the CMP amount, and the 2012 adjustments based on the statutory formula were not large enough to warrant an adjustment.

established in July 2016 will increase by 1.636 percent, resulting in a new CMP amount of \$285,057. This is based on the percentage change between the October 2016 CPI (241.729) and the October 2015 CPI (237.838).<sup>2</sup> The NRC is amending 10 CFR 2.205 to reflect a new maximum CMP under the AEA in the amount of \$285,057 per day, per violation. This represents an increase of \$4,588.

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). Since 1996 the NRC has adjusted this amount (currently set at \$10,781) multiple times under the FCPIAA, as amended. Using the same previously discussed formula in the 2015 Improvements Act, the \$10,781 amount will increase by 1.636 percent, resulting in a new CMP amount of \$10,957. Therefore, the NRC is amending 10 CFR 13.3 to reflect a new maximum CMP amount of \$10,957 per claim. This represents an increase of \$176.

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 **([INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER])**, 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, based on the class of licensee and severity of the violation, in accordance with the NRC Enforcement Policy (ADAMS Accession No. ML16197A561).

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<sup>2</sup> These figures are confirmed by guidance from the Office of Management and Budget (OMB) concerning implementation of the 2015 Improvements Act. See OMB M-17-11, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (December 16, 2016), available at [https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11\\_0.pdf](https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf).

### **III. Rulemaking Procedure**

The 2015 Improvements Act expressly states that agencies shall make the adjustments required by the act “notwithstanding section 553 of title 5, United States Code”. Therefore, because this final rule has been expressly exempted by Congress from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), it is being issued without prior public notice or opportunity for public comment, with an immediate effective date.

### **IV. Section-by-Section Analysis**

#### **10 CFR 2.205**

Paragraph (j) in § 2.205 is revised by replacing “\$280,469” with “\$285,057.”

#### **10 CFR 13.3**

Paragraphs (a)(1)(iv) and (b)(1)(ii) in § 13.3 are revised by replacing “\$10,781” with “\$10,957.”

### **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 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 final rule. 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).

## **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," the NRC has determined that this final rule is exempt from the requirements of 5 U.S.C. 553(b) and that 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. Backfitting 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 adjusts CMP amounts for violations of already-existing NRC regulations and requirements. This final rule does not modify any licensee system, 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 31883).

## **IX. National Environmental Policy Act**

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). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

## **X. Paperwork Reduction Statement**

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. 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 \$285,057 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 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.

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 \$10,957 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 \$10,957 for each such statement.

\* \* \* \* \*

Dated in Rockville, Maryland, this 9<sup>th</sup> day of January, 2017.

For the Nuclear Regulatory Commission.

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Victor M. McCree,  
Executive Director for Operations.

[FR Doc. 2017-01313 Filed: 1/23/2017 8:45 am; Publication Date: 1/24/2017]