

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 November 3, 2000. Comments on this revision should be submitted on or before November 3, 2000 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, 11555 Rockville Pike, Room O1-F21, Rockville, MD, 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 www.nrc.gov/OE/rpr/oe_10.htm.

The NRC's Office of Enforcement maintains the current policy statement on its homepage on the Internet at www.nrc.gov/OE.

FOR FURTHER INFORMATION CONTACT: Bill Borchardt, Director, Office of Enforcement, (301) 415-2741, e-mail rwb1@nrc.gov or Rene 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:

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

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

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 published on May 1, 2000 (65 FR 25368) 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 27th day of September, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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