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RULEMAKING ISSUE

September 9, 1996

(NEGATIVE CONSENT)

SECY-96-195

FOR: The Commissioners

FROM: Karen D. Cyr
General Counsel

James M. Taylor
Executive Director
for Operations

SUBJECT: FINAL RULE: "ADJUSTMENT OF CIVIL MONETARY PENALTIES";
CONFORMING CHANGES TO NRC's ENFORCEMENT POLICY, NUREG-1600

PURPOSE:

To consult with the Commission concerning a Final Rule (Attachment 1) to be issued by the EDO that amends NRC regulations by adjusting the statutory and regulatory maximum civil monetary penalties (CMPs) within the jurisdiction of the Commission. 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 rule change modifying 10 CFR 2.205 necessitates that conforming changes be made to the NRC's Enforcement Policy. These proposed changes are attached for Commission approval (Attachment 2).

BACKGROUND:

The Federal Civil Penalties Inflation Adjustment Act of 1990 required that the President submit, within 6 months and every fifth year thereafter, a report to certain Congressional committees on the specific amounts of civil monetary penalties that were authorized under

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415-1615

NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN
THE FINAL SRM IS MADE AVAILABLE

Geoffrey D. Cant, OE
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Federal law, the amount of those penalties if adjusted for inflation, and a description of modifications to law that would be necessary to increase those penalties to meet the inflation adjustment. Aside from modification of the scope and timing of Presidential reports to Congress, the Debt Collection Improvement Act of 1996 (the Act) amendments require that the head of each agency adjust for inflation, by regulation, the CMPs within the jurisdiction of the agency no later than 180 days after the date of enactment of the Act and at least once every four years thereafter. A composite text of the legislation is attached (Attachment 3).

The first inflation adjustment is required by October 23, 1996, which is 180 days after enactment of the Act on April 26, 1996. The Commission was advised of the new legislative mandate in a memorandum from the General Counsel to the Commission, dated July 30, 1996.

DISCUSSION:

This final rule (Attachment 1) adds a provision to 10 CFR 2.205 that adjusts the maximum civil penalty per violation under the Atomic Energy Act of 1954, as amended, from \$100,000 to \$110,000. In addition, the NRC's regulations in 10 CFR Part 13, which implement the Program Fraud Civil Remedies Act of 1986, are amended to increase the maximum civil penalty per violation from \$5,000 to \$5,500. The rule will become effective 30 days from publication.

The amount of the adjusted maximum civil penalties must be calculated in accordance with the statutory formula. Under the Act, agencies must make the inflation adjustment by increasing the maximum CMPs or the range of minimum and maximum civil monetary penalties, as applicable, for each CMP 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 the penalty was last set or adjusted pursuant to law. 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 \$10,000 but less than or equal to \$100,000. However, the first adjustment of a CMP pursuant to the Act may not exceed 10 percent of the penalty.

Section 234 of the Atomic Energy Act (AEA), as amended in 1980, has limited civil penalties for violations of the Atomic Energy Act to \$100,000 per day per violation. As adjusted for inflation (as calculated by the Financial Management Service of the Department of the Treasury), the penalty amount would be \$180,000 (after rounding the amount of the inflation adjustment increase to the nearest multiple of \$10,000). Because the Debt Collection Improvement Act of 1996 limits the amount of the first required increase to 10% of the maximum penalty amount, however, the NRC must limit its inflation adjustment increase to \$10,000, i.e., 10 percent of \$100,000. Thus, the NRC must by regulation establish a newly effective maximum CMP under the Atomic Energy Act in the amount of \$110,000. The Act also provides that the new penalty levels apply only to violations that occur after the effective date of the regulation raising the level of the maximum penalty.

Monetary penalties under the Program Fraud Civil Remedies Act and the NRC implementing regulation, 10 CFR 13.3(a)(1)(iv) had been limited to \$5,000 per violation. As calculated by the Financial Management Service of the Department of the Treasury, the adjusted penalty amount would be \$7,000. Because of the 10 percent limit on the increase in the penalty for the first adjustment under the Debt Collection Improvement Act of 1996, the amount of the first required increase is \$500. Thus, NRC must increase its maximum CMP under the Program Fraud Civil Remedies Act to \$5,500.

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 reactor licensees for a Severity Level I violation. Also as a matter of policy, the Commission has approved use of lesser amounts for other types of licensees, particularly smaller businesses, and for violations that are assessed at lower severity levels. This approach is set out in Tables 1A and 1B of the Enforcement Policy (NUREG-1600). While the 1996 Act does not mandate changes to these lesser civil penalty amounts, the staff proposes to modify Table 1A of the Enforcement Policy by raising each amount 10%, to be consistent with the intent of the legislation. The proposed revisions are described in the enclosed Federal Register notice (Attachment 2). The revisions would be effective concurrently with the amendments to 10 CFR 2.205. They will also be reflected in the next revision to NUREG-1600.

PUBLIC COMMENT:

A. Final Rule:

This final rule will be issued without prior public notice and opportunity for public comment. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require that 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, notice and public procedure are unnecessary because Congress has mandated the rulemaking actions that are undertaken. No policy determinations are involved in the regulatory amendments; the Commission has no discretion in determining the amount of the inflation adjustment. At an inter-agency meeting hosted by the Financial Management Service of the Department of the Treasury on August 1, 1996, the general consensus of agency representatives was that agencies could issue complying final rules without notice and comment.

B. Enforcement Policy.

The changes to the Enforcement Policy are to take effect 30 days after publication in the Federal Register, concurrent with the regulation change. Comments are being invited, and if the comments warrant, changes can be made to the Policy thereafter.

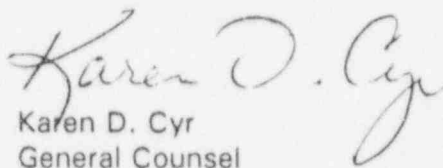
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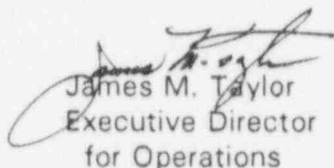
The Office of Commission Appellate Adjudication and the Chief Judge of the Atomic Safety and Licensing Board Panel concur in the amendments to Part 2.

RECOMMENDATIONS:

That the Commission:

1. Note the draft Final Rule that is to be issued by the EDO.
2. Approve the enclosed Federal Register notice for publication of this revision to the Enforcement Policy.
3. Note:
 - a. That under the Small Business Regulatory Enforcement Fairness Act of 1996, the rule and the policy revision will need to be coordinated with OMB for its determination that these actions are not major rulemakings, and the appropriate Congressional and GAO officials will be notified (Attachment 4);
 - b. That the appropriate Congressional committees will be informed (Attachment 5); and
 - c. A public announcement will be issued.


Karen D. Cyr
General Counsel


James M. Taylor
Executive Director
for Operations

- Attachments:
1. Federal Register Notice: Final Rule
 2. Federal Register Notice: Enforcement Policy Revision
 3. Composite Text of Legislation
 4. Congressional Review Letters (Small Business Regulatory Enforcement Fairness Act of 1996)
 5. Congressional Letters

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Tuesday, September 24, 1996.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT September 17, 1996, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of September 30, 1996. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:

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Attachment 1

Federal Register Notice: Final Rule

Nuclear Regulatory Commission
10 CFR Parts 2 and 13
RIN 3150-AF37

Adjustment of Civil Monetary Penalties for Inflation

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) 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 Commission's Rules of Practice are amended by adding a provision that establishes the maximum CMP for a violation of the AEA or any regulations or order issued thereunder in the amount of \$110,000. The provisions concerning program fraud civil penalties are amended by adjusting the maximum civil penalties under the Program Fraud Civil Remedies Act from \$5,000 to \$5,500 for each false claim or statement as determined in accordance with that statute. The final rule also corrects a typographical error.

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

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1615; e-mail RKD@nrc.gov., or Geoffrey D. Cant, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-3283; e-mail GDC@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction.
- II. Background.
- III. Discussion.
- IV. Procedural Background.
- V. Environmental Impact: Categorical Exclusion.
- VI. Paperwork Reduction Act Statement.
- VII. Regulatory Analysis.
- VIII. Small Business Regulatory Enforcement Fairness Act.
- IX. Backfit Analysis.

I. Introduction

The Commission has amended its regulations in Part 2 and 13 in order to adjust maximum civil monetary penalties within its jurisdiction as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (the Act) (Pub. L. 104-134, 110 Stat. 1321-358, 373, codified at 28 U.S.C. 2461 note).

II. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 required that the President submit, within 6 months and every fifth year thereafter, a report to certain Congressional committees on the specific amounts of civil monetary penalties that were authorized under Federal law, the amount of the penalties if adjusted for inflation, and a description of modifications to Federal law that would be necessary to increase the penalties to meet the inflation adjustment. Aside from modification of the scope and timing of Presidential reports to Congress, the Debt Collection Improvement Act of 1996 amended that statute to require that the head of each agency adjust by regulation the CMPs within the jurisdiction of the agency for inflation, no later than 180 days after the date of enactment of the Act and at least once every four years thereafter. Thus, the first inflation adjustment is required by October 23, 1996, which is 180 days after enactment of the Act on April 26, 1996.

The inflation adjustment is to be determined by increasing the maximum CMPs or the range of minimum and maximum civil monetary penalties, as applicable, for each CMP 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 such penalty was last set or adjusted pursuant to law. 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 \$10,000 but less than or equal to \$100,000. However, the first adjustment of a CMP pursuant to the Debt Collection Improvement Act of 1996 may not exceed 10 percent of such penalty.

III. Discussion

Section 234 of the Atomic Energy Act (AEA), as amended in 1980, has limited civil penalties for violations of the Atomic Energy Act to \$100,000 per day per violation. As adjusted for inflation, the penalty amount would be \$180,000 (after rounding the amount of the inflation adjustment increase to the nearest multiple of \$10,000). Because the Debt Collection Improvement Act of 1996 limits the amount of the first required increase to 10% of the maximum penalty amount, however, the NRC must limit its inflation adjustment increase to \$10,000, i.e., 10 percent of \$100,000. Thus, the NRC has by regulation, by addition of a subsection (j) to 10 CFR 2.205, established a new maximum CMP under the Atomic Energy Act in the amount of \$110,000. This new maximum CMP applies only to violations which 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), had been limited to \$5,000 per violation. As adjusted fully for inflation, the penalty amount would be \$7,000. Because of the 10 percent limit on the increase in the penalty for the first adjustment under the Debt Collection Improvement Act of 1996, the amount of the first required increase is limited to \$500. Thus, NRC has amended 10 CFR 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 \$5,000 to \$5,500. 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 the inflation adjustment must be calculated in accordance with the statutory formula. Conforming changes to the NRC Enforcement Policy (NUREG-1600), published in the Federal Register on June 30, 1995 (60 FR 34381), will be made and published in a notice accompanying this rule.

The final rule also corrects a typographical error in 10 CFR 13.3(a)(1)(iv). The word "as" is substituted for the word "was" and the clause, as revised, now conforms to the exact words of 31 U.S.C. 3801(a)(1)(D), as the NRC originally intended.

IV. 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 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 issue

the amendments contained in the rule, and provided no discretion to the agency regarding the substance of the amendments. All that is required of the NRC for determination of the amount of the inflation adjustment are ministerial computations.

V. 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)a and 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation. This action merely adjusts monetary civil penalties for inflation as required by statute and involves no policy determinations.

VI. Paperwork Reduction Act Statement

This final rule 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.).

VII. Regulator's 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 Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 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. Thus, principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain their deterrent effect and promote compliance with the law. Thus, these are anticipated impacts of implementation of the mandatory provisions of the legislation. Direct monetary impacts will fall only upon licensees or other persons subjected to NRC enforcement action 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).

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. 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 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 Federal 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 2 and 13.

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

1. The authority citation for Part 2 is revised 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. 161b, 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). Section 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). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section 2.205 is amended by adding 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 imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed \$110,000 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

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

AUTHORITY: Public Law 99-509, secs. 6101-6104, 100 Stat. 1874 (31 U.S.C. 3801-3812). Sections 13.13(a) and (b) also issued under section

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).

4. In § 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 \$5,500 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
law, to a civil penalty of not more than \$5,500 for each such statement.

* * * * *

For the Nuclear Regulatory Commission.

James M. Taylor
Executive Director for Operations.

Dated at Rockville, Maryland,
this ____ day of _____, 1996.

Attachment 2

Federal Register Notice: Enforcement Policy Revision

SUPPLEMENTARY INFORMATION:

Section 234 of the Atomic Energy Act (42 U.S.C. 2282) set the maximum civil penalty amount that the NRC may issue at \$100,000 per violation per day. That amount was set in 1980. The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 required that the President submit, within 6 months and every fifth year thereafter, a report to certain Congressional committees on the specific amounts of civil monetary penalties that were authorized under Federal law, the amount of those penalties if adjusted for inflation, and a description of modifications to law that would be necessary to increase those penalties to meet the inflation adjustment. Aside from modification of the scope and timing of Presidential reports to Congress, the Debt Collection Improvement Act of 1996 (the Act) amended that statute so as to require that the head of each agency adjust for inflation, by regulation, the CMPs within the jurisdiction of the agency no later than 180 days after the date of enactment of the Act and at least once every four years thereafter.

The deadline for the first adjustment is October 23, 1996. Each agency is required to adjust, by regulation, each civil monetary penalty by the inflation adjustment described in the Act and publish the regulation in the Federal Register. Any increase in a penalty made under the Act may apply only to violations occurring after the date that the increase takes effect. The NRC is also, concurrent with this change, publishing in the Federal Register, a change to 10 CFR 2.205 to reflect the implementation of the 1996 Act.

NUCLEAR REGULATORY COMMISSION

Policy and Procedure for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) to address the requirements imposed by the Debt Collection Improvement Act of 1996. That Act requires federal agencies to adjust civil monetary penalties to reflect inflation.

DATES: This revision is effective 30 days after publication in the Federal Register. The Commission invites comments on these changes and, on the basis of the comments submitted, will make changes, if warranted. The Commission will apply the modified Policy to violations that occur after the effective date.

ADDRESSEES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm, on Federal workdays. Copies of comments may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower-Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 301-504-2741.

collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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.

Accordingly, the NRC Enforcement Policy is amended by:

- a. Adding a new paragraph to follow the third paragraph in Section II.A,
- b. Revising paragraph VI.B.2.d and the figures in Table 1A; and
- c. Revising the introductory paragraph to Section VII.A. and paragraph VII.A.3 to read as follows:

Although inflation since the 1980 change to Section 234 would yield an increase of the current maximum civil penalty to \$180,000, by the 1996 Act, the first adjustment of a Civil Monetary Penalty is limited to 10 per cent of the penalty, yielding an increase to \$110,000 for the maximum civil penalty per violation per day.

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 reactor licensees for a Severity Level I violation. Also as a matter of policy, the Commission has approved use of lesser amounts for other types of licensees, particularly smaller businesses, and for violations that are assessed at lower severity levels. This approach is set out in Tables 1A and 1B of the Enforcement Policy (NUREG-1600). 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 raising each amount 10 per cent, to be consistent with the intent of the legislation. These changes will be reflected in the next revision to NUREG-1600 and apply to violations occurring after the effective date of this Policy Statement.

Paperwork Reduction Act Statement

This 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 3150-0011. The approved information

However, in no instance will a civil penalty for any one violation exceed \$110,000 per day.

TABLE 1A--BASE CIVIL PENALTIES

a.	Power reactors.....	\$110,000
b.	Fuel fabricators, industrial processors, and independent spent fuel and monitored retrievable storage installations.....	\$27,500
c.	Test reactors, mills and uranium conversion facilities, contractors, vendors, waste disposal licensees, and industrial radiographers.....	\$11,000
d.	Research reactors, academic, medical, or other material licensee ¹	\$5,500

¹ This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

* * * * *

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

* * * * *

II. STATUTORY AUTHORITY AND PROCEDURAL FRAMEWORK

A. Statutory Authority

* * * * *

Notwithstanding the \$100,000 limit stated in the Atomic Energy Act, the Commission may impose higher civil penalties as provided by the Debt Collection Improvement Act of 1996. Under that Act, the Commission is required to modify civil monetary penalties to reflect inflation. The adjusted maximum civil penalty amount is reflected in 10 CFR 2.205 and this Policy Statement.

* * * * *

VI. ENFORCEMENT ACTIONS

B. Civil Penalty

2. * * * * *

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 the NRC's concern regarding the violation at issue and that it conveys the appropriate message to the licensee.

VII. EXERCISE OF DISCRETION

A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III 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 appropriate 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 \$110,000 per violation, per day.

* * * * *

3. *Daily civil penalties.* In order to recognize the added technical safety significance or regulatory 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 \$110,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware 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.

* * * * *

FOR THE NUCLEAR REGULATORY COMMISSION.

John C. Hoyle
Secretary of the Commission

Dated at Rockville, MD,
this ____ day of _____, 1996.

Attachment 3

Composite Text of Legislation

FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT

SHORT TITLE

Section 1. This Act may be cited as the 'Federal Civil Penalties Inflation Adjustment Act of 1990'.

FINDINGS AND PURPOSE

Sec. 2. (a) Findings.--The Congress finds that--

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) Purpose.--The purpose of this Act is to establish a mechanism that shall--

(1) allow for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

DEFINITIONS

Sec. 3. For purposes of this Act, the term--

(1) 'agency' means an Executive agency as defined under section 105 of title 5, United States Code [5 U.S.C.A. s 105], and includes the United States Postal Service;

(2) 'civil monetary penalty' means any penalty, fine, or other sanction that--

(A) (i) is for a specific monetary amount as provided by Federal law; or

(ii) has a maximum amount provided for by Federal law; and

(B) is assessed or enforced by an agency pursuant to Federal law; and

(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and

(3) 'Consumer Price Index' means the Consumer Price Index for all-urban consumers published by the Department of Labor.

CIVIL MONETARY PENALTY INFLATION ADJUSTMENT REPORTS

Sec. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996, and at least once every 4 years thereafter--

(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, or the Social Security Act, by the inflation adjustment described under section 5 of this Act; and

(2) publish each such regulation in the Federal Register.

~~Within 6 months after the date of the enactment of this Act [Oct.~~

nearest--

(1) multiple of \$10 in the case of penalties less than or equal to \$100;

(2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) multiple of \$25,000 in the case of penalties greater than \$200,000.

(b) Definition.--For purposes of subsection (a), the term 'cost-of-living adjustment' means the percentage (if any) for each civil monetary penalty by which--

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

ANNUAL REPORT

Sec. 6. No later than January 1 of each year, the President shall submit a report on civil monetary penalties to the Congress which shall include--

(1) to the extent possible, the number and amount of civil monetary penalties imposed pursuant to each provision of law providing for such civil monetary penalties, during the complete fiscal year preceding the submission of such report;

(2) to the extent possible, the number and amount of such

~~5, 1990], and on January 1 of each fifth calendar year thereafter, the President shall submit a report on civil monetary penalty inflation adjustment to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives. Such report shall include—~~

~~—(1) each civil monetary penalty as defined under section 3(2);~~

~~—(2) the date each civil monetary penalty was most recently set pursuant to—~~

~~—law;—~~

~~—(3) the maximum amount of each civil monetary penalty or if applicable, the range of the minimum and maximum amounts of such civil monetary penalty in effect on the date of the submission of such report;—~~

~~—(4) the amount of each civil monetary penalty described under paragraph (3) other than any such penalty for which inflation adjustment is provided by law, if each such penalty is increased by the adjustment described under section 5; and—~~

~~—(5) a listing of the modifications to Federal law that would be required to—~~

~~—(A) increase each penalty described in paragraph (1) by the adjustments described under section 5, excluding any penalty for which inflation adjustment is provided by law or that has been increased within the 5 year period immediately preceding the date of the submission of such report; and—~~

~~—(B) provide that any increase in any civil monetary penalty shall apply only to violations which occur after the date any such increase takes effect.—~~

COST-OF-LIVING ADJUSTMENTS OF CIVIL MONETARY PENALTIES

Sec. 5. (a) Adjustment.--The inflation adjustment ~~described~~ under paragraphs (4) and (5)(A) of section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the

civil penalties collected during such fiscal year; and

(3) any recommendations that the President determines appropriate to--

(A) eliminate obsolete civil monetary penalties;

(B) modify the amount of any civil monetary penalty; or

(C) make any other legislative modifications concerning civil monetary penalties."

SEC. 7. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.

Note: LIMITATION ON INITIAL ADJUSTMENT. -- The first adjustment of a civil monetary penalty made pursuant to the amendment made by paragraph (1) of section (s) of the Debt Collection Improvement Act of 1996 [Section 4 above] may not exceed 10% of such penalty.

Note: Memorandum of President of the United States, May 3, 1991, 56 F.R. 21911, delegated to Director of Office of Management and Budget responsibility of President for submitting reports on civil monetary penalties to Committee on Governmental Affairs of the Senate and Committee on Government Operations of the House of Representatives and to Congress as required by sections 4 and 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L. 101-410, set out as a note under this section.

Attachment 4

Congressional Review Letters
(Small Business Regulatory Enforcement Fairness Act of 1996)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a final rule that will adjust the Commission's monetary civil penalties for inflation. The NRC is also submitting a related notice of revision to the NRC Enforcement Policy.

The final rule action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (P.L. 104-134, 110 Stat. 1321-358, 373, codified at 28 U.S.C. 2461 note). The first required adjustments are limited to 10% of the amount of the existing penalty. Thus, the NRC is adjusting by regulation the maximum civil penalty that can be imposed under section 234 of the Atomic Energy Act of 1954 (AEA), as amended, from \$100,000 to \$110,000. The NRC is also adjusting the maximum civil penalty that can be imposed for false claims or statements under the Program Fraud Civil Remedies Act from \$5,000 to \$5,500.

The revision to NRC's Enforcement Policy involves conforming changes that reflect the increase in the maximum civil penalty under section 234 of the AEA. The revision also includes corresponding increases of 10% in the lesser amounts that the Commission, as a matter of policy, has approved as base civil penalties for certain types of licensees, particular smaller businesses, and for violations that are assessed at lower severity levels.

We have determined that neither the final rule nor the revision to the NRC Enforcement Policy is a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed are copies of the notice of the final rule and the revision to the NRC Enforcement Policy, which are being transmitted to the Federal Register for publication. The supplementary information in the notice for publication of the final rule in the Federal

The Honorable Newt Gingrich

-2-

Register includes the regulatory analysis for the final rule. The final rule and the revision to the NRC Enforcement Policy are scheduled to become effective 30 days after publication.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: 1. Final Rule
2. Policy Statement Revision



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Al Gore
President of the United
States Senate
Washington, DC 20510

Dear Mr. President:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a final rule that will adjust the Commission's monetary civil penalties for inflation. The NRC is also submitting a related notice of revision to the NRC Enforcement Policy.

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We have determined that neither the final rule nor the revision to the NRC Enforcement Policy is a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed are copies of the notice of the final rule and the revision to the NRC Enforcement Policy, which are being transmitted to the Federal Register for publication. The supplementary information in the notice for publication of the final rule in the Federal

The Honorable Al Gore

-2-

Register includes the regulatory analysis for the final rule. The final rule and the revision to the NRC Enforcement Policy are scheduled to become effective 30 days after publication.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: 1. Final Rule
2. Policy Statement Revision



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

Mr. Robert P. Murphy
General Counsel
General Accounting Office
Room 7175
441 G St., NW
Washington, DC 20548

Dear Mr. Murphy:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a final rule that will adjust the Commission's monetary civil penalties for inflation. The NRC is also submitting a related notice of revision to the NRC Enforcement Policy.

The final rule action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (P.L. 104-134, 110 Stat. 1321-358, 373, codified at 28 U.S.C. 2461 note). The first required adjustments are limited to 10% of the amount of the existing penalty. Thus, the NRC is adjusting by regulation the maximum civil penalty that can be imposed under section 234 of the Atomic Energy Act of 1954 (AEA), as amended, from \$100,000 to \$110,000. The NRC is also adjusting the maximum civil penalty that can be imposed for false claims or statements under the Program Fraud Civil Remedies Act from \$5,000 to \$5,500.

The revision to NRC's Enforcement Policy involves conforming changes that reflect the increase in the maximum civil penalty under section 234 of the AEA. The revision also includes corresponding increases of 10% in the lesser amounts that the Commission, as a matter of policy, has approved as base civil penalties for certain types of licensees, particular smaller businesses, and for violations that are assessed at lower severity levels.

We have determined that neither the final rule nor the revision to the NRC Enforcement Policy is a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed are copies of the notice of the final rule and the revision to the NRC Enforcement Policy, which are being transmitted to the Federal Register for publication. The supplementary information in the notice for publication of the final rule in the Federal

Mr. Robert P. Murphy

-2-

Register includes the regulatory analysis for the final rule. The final rule and the revision to the NRC Enforcement Policy are scheduled to become effective 30 days after publication.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: 1. Final Rule
2. Policy Statement Revision

Attachment 5
Congressional Letters



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Lauch Faircloth
Chairman, Subcommittee on Clean Air,
Wetlands, Private Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed for the information of the Subcommittee are copies of a notice of final rule regarding maximum civil penalties and a notice of related revisions to the NRC's Enforcement Policy. These documents will be published in the Federal Register.

In the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996 (P.L. 104-134, 110 Stat. 1321-358, 373), Congress requires that the head of each Federal agency make adjustments by regulation to the agency's maximum civil penalties by October 23, 1996.

In accordance with this statutory requirement, the final rule increases the maximum civil penalty per violation under section 234 of the Atomic Energy Act of 1954 (AEA), as amended, from \$100,000 to \$110,000. As also required by the statutory formula, the final rule amends the NRC's implementing regulations for the Program Fraud Civil Remedies Act by increasing the maximum civil penalty per violation from \$5,000 to \$5,500.

As a result of the adjustments to the maximum civil penalty under the AEA, the NRC's Enforcement Policy is revised to reflect the new maximum civil penalty. The revised Enforcement Policy also makes corresponding changes in the amounts of the lower base

The Honorable Lauch Faircloth

-2-

civil penalties that the Commission has approved for certain types of licensees, particularly small businesses, and certain lower severity levels.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: 1. Final Rule Notice
2. Enforcement Policy Revision Notice

cc w/enclosures: Senator Bob Graham



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-000

The Honorable Dan Schaefer
Chairman, Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed for the information of the Subcommittee are copies of a notice of final rule regarding maximum civil penalties and a notice of related revisions to the NRC's Enforcement Policy. These documents will be published in the Federal Register.

In the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996 (P.L. 104-134, 110 Stat. 1321-358, 373), Congress requires that the head of each Federal agency make adjustments by regulation to the agency's maximum civil penalties by October 23, 1996.

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As a result of the adjustments to the maximum civil penalty under the AEA, the NRC's Enforcement Policy is revised to reflect the new maximum civil penalty. The revised Enforcement Policy also makes corresponding changes in the amounts of the lower base

The Honorable Dan Schaefer

-2-

civil penalties that the Commission has approved for certain types of licensees, particularly small businesses, and certain lower severity levels.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: 1. Final Rule Notice
2. Enforcement Policy Revision Notice

cc w/enclosures: Representative Frank Pallone