

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 November 12, 1996. 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.

ADDRESSES: 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.

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.

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 percent 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 percent, 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 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 (60 FR 34381, June 30, 1995) 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:

General Statement of Policy and Procedure for NRC Enforcement Actions

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II. Statutory Authority and Procedural Framework

A. Statutory Authority

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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.

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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. 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.

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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.

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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.

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Dated at Rockville, MD, this 4th day of October, 1996.
For the Nuclear Regulatory Commission.
John C. Hoyle,
Secretary of the Commission.
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