

NUCLEAR REGULATORY COMMISSION

[NRC-2016-xxxx]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to its Enforcement Policy (Enforcement Policy or Policy) to reflect the new maximum civil penalty amount the agency can assess for a violation of the Atomic Energy Act of 1954, as amended (AEA), or any regulation or order issued under the AEA. By interim final rule, the NRC changed this amount from \$140,000 to \$280,469 per violation per day, as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Improvements Act). This action revises the Enforcement Policy so that dollar amounts in the policy correspond to the agency's revised civil penalty amount, and also provides guidance regarding instances where the NRC may exercise discretion in mitigating the amount of a civil penalty.

DATES: This revision to the Enforcement Policy is effective on August 1, 2016. The Commission will apply the revised Enforcement Policy to any penalties assessed on and after the effective date; the penalty is not based on the date that the violation occurs.

ADDRESSES: Please refer to Docket ID **[NRC-2016-xxx]** when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2016-xxx**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: 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 <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. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The revisions to Section 3.6 and Table A of Section 8.0 of the Enforcement Policy, in their entirety, are in the attachment to this document. The revised Enforcement Policy is also available in ADAMS under Accession No. ML15029A148, and on the NRC’s public Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

- **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: Russell Arrighi, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, telephone: 301-415-0205, e-mail: Russell.Arrighi@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the 2015 Improvements Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) and required all agencies to adjust for inflation their levels of civil monetary penalties via rulemaking by July 1, 2016, to be effective no later than August 1, 2016. In an interim final rule published in the Rules and Regulations section of the *Federal Register* (*FRN # for interim rule*), the NRC is amending its regulations to implement the 2015 Improvements Act by adjusting the amount in § 2.205(j) of title 10 of the *Code of Federal Regulations* (10 CFR), according to a statutory formula based on the Consumer Price Index (CPI), from \$140,000 to \$280,469. This amount represents the new maximum civil penalty that the NRC may impose for a violation of the AEA, or any regulation or order issued under the AEA, per violation per day. Starting in January 2017, the 2015 Improvements Act also requires that the NRC make annual inflation adjustments to the maximum civil penalty amount in 10 CFR 2.205, rounded to the nearest multiple of \$1.

To incorporate the updated maximum civil penalty amount specified in its regulations, the NRC is issuing a revision to its Enforcement Policy (ADAMS Accession No. ML15029A148). Specifically, the NRC is updating Table A in Section 8.0, "Table of Base Civil Penalties," which currently lists \$140,000 as the maximum civil penalty amount the agency may assess for the most significant severity level of violation. To promote regulatory certainty and save NRC staff resources by lessening the chances that the Enforcement Policy will have to be revised on an annual basis alongside 10 CFR 2.205 resulting from minor increases in inflation (less than one half percent), the maximum civil penalty amount in the revised Table A will be calculated by rounding the maximum civil penalty amount in 10 CFR 2.205 down to the nearest multiple of \$10,000 (assuming the amount in 10 CFR 2.205 is not already a multiple of \$10,000). Therefore, the new maximum civil penalty in Table A is now \$280,000, rounded down from

\$280,469. The 2015 Improvements Act does not limit the Commission's authority to exercise discretion and assess civil penalty levels below the statutory maximum, and the gains to be realized from a more stable table of base civil penalties outweighs any arguable loss of deterrent effect from rounding this maximum figure down, at most, \$9,999 in a given year. Additionally (and as stated in the Preface to the Enforcement Policy), this is a statement of policy, not regulation, and the Commission still reserves the right to deviate from the Enforcement Policy where particular circumstances warrant and assess the full statutory maximum.

The revised Table A in Section 8.0 of the Enforcement Policy also now includes a note explaining how the table's maximum civil penalty amount is generated as a result of rounding down from the number in 10 CFR 2.205. The note also explains that other amounts listed in the table have been adjusted to maintain the same proportional relationship between penalties. The revised table also now includes a footnote explaining that the maximum civil penalty is adjusted on an annual basis to put the regulated community on notice that the NRC may periodically update the amount in 10 CFR 2.205 pursuant to the 2015 Improvements Act, which would necessitate a change to the amounts in Table A in Section 8.0 of the Enforcement Policy. In the event of such an update, the NRC may assess civil penalties consistent with the updated amount in 10 CFR 2.205 even if it has not yet performed an update to Table A (though the NRC will strive to provide timely updates of the Enforcement Policy when necessitated by updates to 10 CFR 2.205). Additionally, as stated in Section 6 of the FCPIAA (28 U.S.C. 2461 note), when the NRC increases civil penalty amounts through rulemaking pursuant to the 2015 Improvements Act, it will apply those increased amounts when assessing any penalty after the effective date of that rulemaking, regardless of whether the underlying violation occurred before that effective date.

The NRC is not adjusting the civil penalty amounts in Table A for the "loss, abandonment, or improper transfer of disposal of regulated material, regardless of the use or

type of licensee,” other than to note that these values will be periodically reviewed and updated, since these civil penalty amounts are determined by the estimated or actual cost of authorized disposal.

Lastly, because the agency’s authority to issue civil penalties for violations of the AEA has more than doubled as a result of the 2015 Improvements Act, the NRC is also including new language in Section 3.6 of the Enforcement Policy, “Use of Discretion in Determining the Amount of a Civil Penalty,” to confirm that, notwithstanding the outcome of the normal civil penalty process, the agency may take into account mitigating factors based on the merits of an individual case, including the ability of various classes of licensees to pay. It is not the NRC’s intention that the economic impact of a civil penalty be so severe that it adversely affects a licensee’s ability to safely conduct licensed activities or puts a licensee out of business. Section 3.6 now allows NRC staff to consider enforcement discretion for cases where there is a concern that imposition of a base civil penalty would be overly punitive rather than a deterrent for the individual or licensee.

II. Congressional Review Act

This policy statement 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.

Dated at Rockville, Maryland, this **xxth** day of **[Month]**, 2016.

For the Nuclear Regulatory Commission.

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

3.6 Use of Discretion in Determining the Amount of a Civil Penalty

Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section 2.3.4, “Civil Penalty,” the NRC may exercise discretion⁵ by either: (1) proposing a civil penalty where application of the civil penalty assessment factors would otherwise result in zero penalty, (2) escalating the amount of the resulting civil penalty to ensure that the proposed civil penalty appropriately reflects the significance of the issue, or (3) mitigating the amount based on merits of the case and the ability of the various classes of licensees to pay. In accordance with Section 2.3.10, “Commission Notification and Consultation on Enforcement Actions,” of this Policy, the Commission must be notified of all enforcement actions involving civil penalties and must be consulted for any proposed civil penalty for a single violation or problem that is greater than 3 times the value in Tables A and B in Section 8.0 for the severity level violation being considered.

Civil penalty discretion should be considered for, but is not limited to, the following:

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- i. for cases involving an individual or a licensee where a concern exists that the outcome from the proposed civil penalty may be overly punitive rather than deterrent.

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8.0 TABLE OF BASE CIVIL PENALTIES

TABLE A¹

a. Power reactors, gaseous diffusion uranium enrichment plants, and high-level waste repository	\$280,000
b. Fuel fabricators authorized to possess Category I or II quantities of SNM and uranium conversion facilities.....	\$140,000
c. All other fuel fabricators, including facilities under construction, authorized to possess Category III quantities of SNM, industrial processors, ² independent spent fuel and monitored retrievable storage installations, mills, gas centrifuge and laser uranium enrichment facilities	\$70,000
d. Test reactors, contractors, waste disposal licensees, industrial radiographers, and other large material users.....	\$28,000

⁵ In the context of Section 3.6, “discretion” refers to the escalation or mitigation of an enforcement action or sanction. This differs from the typical use of the term “discretion” to indicate the NRC’s choice to mitigate or not take enforcement action for an issue.

¹ The NRC adjusts the amount specified in 10 CFR 2.205 on an annual basis pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The NRC may impose civil penalties in amounts greater than the values in this table (up to the statutory maximum) based on an increase to the amount specified in 10 CFR 2.205 as published in the *Federal Register*.

² Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

- e. Research reactors, academic, medical, or other small material users³..... \$14,000
- f. Loss, abandonment, or improper transfer or disposal of regulated material, regardless of the use or type of licensee:⁴
 - a. Sources or devices with a total activity greater than 3.7×10^4 MBq (1 Curie), excluding hydrogen-3 (tritium)..... \$54,000
 - b. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i) \$17,000
 - c. Sources and devices not otherwise described above..... \$7,000
- g. Individuals who release safeguards information \$7,000

NOTE: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), the civil penalty amounts apply to any penalties assessed on and after the date that the new amounts take effect; not from the date of the violation.

The maximum value in item a. of this Table is calculated by rounding the maximum civil penalty amount specified in 10 CFR 2.205 down to the nearest multiple of \$10,000. Although the 2015 Act does not mandate changes to the lesser civil penalty amounts, the other values are also changed to maintain the same proportional relationship between the penalties.

The values specified in this Table, with the exception of item f., are adjusted utilizing the philosophy described in Section 2.3.4, “Civil Penalty,” of this Policy. The base civil penalty amounts in item f. have been determined to be approximately 3 times the average cost of disposal. For specific cases, the NRC may adjust these amounts to correspond to 3 times the estimated or actual cost of authorized disposal for the particular material in question. These values are adjusted periodically as necessary.

³ This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.