

Dated: September 17, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 2 and 13

RIN 3150-AI45

[NRC-2008-0412]

### Adjustment of Civil 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) it can assess under statutes within the jurisdiction of the NRC. These changes were mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. 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 \$130,000 to \$140,000 per violation per day. Further, the provisions concerning program fraud civil penalties are being amended by adjusting the maximum CMP under the Program Fraud Civil Remedies Act from \$6,000 to \$7,000 for each false claim or statement.

**DATES:** This rule is effective on October 23, 2008.

**ADDRESSES:** You can access publicly available documents related to this document using the following methods:

*Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0412]. Address questions about NRC dockets to Carol Gallagher 301-415-5905; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's electronic

Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-899-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Maxwell C. Smith, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-1246, e-mail: [maxwell.smith@nrc.gov](mailto:maxwell.smith@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion
- III. Procedural Background
- IV. Voluntary Consensus Standard
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Certification
- IX. Backfit Analysis
- X. Congressional Review Act

#### I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, requires that the head of each agency adjust by regulations the CMPs within the jurisdiction of the agency for inflation at least once every four years. The NRC's last adjustment to the CMPs within its jurisdiction became effective on November 26, 2004. (October 26, 2004; 69 FR 62393).

The inflation adjustment is to be determined by increasing the maximum CMPs 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 in the last calendar year in which the amount of the penalty was last adjusted. Applying this formula results in a 9.8 percent increase to the maximum CMPs for violations of the AEA. During the 2004 inflation adjustment, the CMPs for violations of the Program Fraud Civil Remedies Act remained unchanged. Therefore, for this update the percentage change to CMPs for violations of the Program Fraud Civil Remedies Act is the change in the CPI from June 2000 (the date it was last adjusted for inflation) until June 2007, which is a difference of 21 percent. 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 \$100,000 but less than or equal to \$200,000.

#### II. Discussion

Section 234 of the AEA limits civil penalties for violations of the Atomic Energy Act to \$100,000 per day per violation. In 1996, under the Debt Collection Improvement Act (DCIA), the NRC adjusted this figure to \$110,000. The DCIA also amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require that the head of each agency adjust the CMPs within the jurisdiction of the agency for inflation at least once every four years. Therefore, in 2000 the NRC adjusted the maximum CMPs to \$120,000, and in 2004 the NRC adjusted the maximum CMPs to \$130,000. The NRC is required to adjust the CMPs within its jurisdiction again this year. After this mandatory adjustment for inflation, the adjusted maximum CMP for a violation of the AEA or any regulation or order issued under the AEA will be \$140,000 per day per violation (rounding the amount of the inflation adjustment increase, 9.8 percent, to the nearest multiple of \$10,000). Thus, the NRC is amending § 2.205 to reflect a new maximum CMP under the AEA in the amount of \$140,000 per day per violation. The amended maximum CMP applies only to violations that occur after the effective date of this final rule.

Monetary penalties under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 and 3802, and the NRC's implementing regulations, § 13.3(a)(1) and (b)(1) are currently limited to \$6,000. In 2004, when the NRC last adjusted CMPs for inflation, these penalties did not meet the statutory criteria to be changed because the inflation increase was not large enough. The NRC must adjust CMPs for the change in inflation since the last time the CMPs were adjusted. For the Program Fraud Civil Remedies Act CMPs, this means the change in the CPI since 2000; that difference is 21 percent. When this change is applied to § 13.3(a)(1) and (b)(1) (and rounding to the nearest multiple of \$1,000) the new penalty amount will be \$7,000. Thus, the NRC is amending § 13.3(a)(1) and (b)(1) by increasing the maximum civil penalty for each false statement or claim under the Program Fraud Civil Remedies Act from \$6,000 to \$7,000. The amended CMP applies only to violations that occur after the effective date of this final rule.

The Commission has no discretion to set alternative levels of adjusted civil penalties because the amount of inflation adjustment must be calculated by a formula established by statute.

Conforming changes to the NRC Enforcement Policy (NUREG-1600) will be made as part of the overall revisions to the Enforcement Policy currently taking place. (January 25, 2007; 72 FR 3429).

### III. Procedural Background

This final rule has been issued without prior public notice or opportunity for public comments. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require an agency to use the public notice and comment process "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore 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 the NRC to adjust the CMPs within NRC jurisdiction for inflation at least once every four years, and provided no discretion regarding the substance of the amendments. The NRC is required only to perform ministerial computations to determine the inflation adjustment to the CMPs.

### IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. There are no consensus standards that apply to the inflation adjustment requirements in this final rule. Thus, the provisions of the Act do not apply to this rulemaking.

### V. Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

### VI. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

### VII. Regulatory 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 (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996, as amended (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. 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. Thus, these are anticipated impacts of implementation of the mandatory provisions of the legislation. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement or those licensees or persons subjected to liability under 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. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule would not have a significant economic impact upon a substantial number of small entities.

### IX. Backfit Analysis

The NRC has determined that these amendments do not involve any provision which would impose a backfit under the backfit rule, §§ 50.109, 70.76, 72.62, 76.76; therefore, a backfit analysis need not be prepared.

### X. Congressional Review Act

In accordance with the Congressional Review Act, 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.

### 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 in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, 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 continues to read as follows:

**Authority:** Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Public Law 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; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 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), Public Law 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Public Law 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, 183i, 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 Public Law 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161 b, 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 Public Law 101-410, 104 Stat. 90, as amended by section 3100(s), Public Law 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600-2.606 also issued under sec. 102, Public Law 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section

2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under secs. 135, 141, Public Law 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 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, Public Law 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, Public Law 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). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Public Law 91-550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.205, paragraph (j) is revised 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 \$140,000 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:** Public Law 99-509, sec. 6101-6104, 100 Stat. 1874 (31 U.S.C. 3801-3812); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 13.13(a) and (b) also issued under section Public Law 101-410, 104 Stat. 890, as amended by section 31001(s), Public Law 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note).

■ 4. In § 13.3, paragraphs (a)(1)(iv) and (b)(1)(ii) are revised 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 \$7,000 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 \$7,000 for each such statement.

\* \* \* \* \*

Dated at Rockville, Maryland, this 4th day of September 2008.

For the Nuclear Regulatory Commission.

**Bruce S. Mallett,**

*Acting Executive Director for Operations.*

[FR Doc. E8-22172 Filed 9-22-08; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1231

RIN 2590-AA08

Golden Parachute Payments

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Correcting amendments.

**SUMMARY:** The Federal Housing Finance Agency has determined, insofar as it relates to indemnification payments, to rescind that portion of the Interim Final Rule, published in the **Federal Register** on September 16, 2008 (73 FR 53356). That portion of the rule will be subject to a separate rulemaking, which will be published for public comment in the near term. Insofar as the Interim Final Rule addresses factors related to golden parachute payments, that portion of the rule remains effective and available for comment. This document corrects specific provisions in the rule referring to indemnification payments.

**DATES:** *Effective Date:* September 23, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Alfred M. Pollard, General Counsel (OFHEO), telephone (202) 414-3788; or Christopher Curtis, General Counsel (FHFB), telephone (202) 408-2802 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**Need for Correction**

As published on September 16, 2008, and on September 19, 2008, the interim final regulation contained clerical and other errors, which these amendments correct.

List of Subjects in 12 CFR Part 1231

Golden parachutes, Government-sponsored enterprises.

■ Accordingly, part 1231 of Title 12 CFR Chapter XII is corrected by making the following correcting amendments:

PART 1231—GOLDEN PARACHUTE PAYMENTS

■ 1. The authority citation for part 1231 continues to read as follows:

**Authority:** 12 U.S.C. 4518(e).

■ 2. Section 1231.1 is revised to read as follows:

§ 1231.1 Purpose.

The purpose of this part is to implement section 1318(e) of the Act by setting forth the standards that the Director will take into consideration in determining whether to limit or prohibit golden parachute payments to entity-affiliated parties.

■ 3. Section 1231.5 is amended by revising the introductory text and paragraph (f) to read as follows:

§ 1231.5 Factors to be taken into account.

In determining whether to prohibit or limit any golden parachute payment, the Director shall consider the following factors—

\* \* \* \* \*

(f) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute payment, including but not limited to negligence, gross negligence, neglect, willful misconduct, breach of fiduciary duty, and malfeasance on the part of an entity-affiliated party.

Dated: September 18, 2008.

**James B. Lockhart III,**

*Director, Federal Housing Finance Agency.*

[FR Doc. E8-22260 Filed 9-19-08; 11:15 am]

BILLING CODE 8070-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245-AF78

Military Reservist Economic Injury Disaster Loans

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Direct final rule.

**SUMMARY:** SBA makes economic injury disaster loans to small businesses that have been adversely affected by specific events. If a small business has an essential employee or owner who is a member of a reserve component of the