

the public and for loss of property (due to contamination) if the device is lost, abandoned, or improperly transferred or disposed of. Based on the higher risk, violations involving loss, abandonment, or improper transfer or disposal of sources and devices in this category have been assigned a base civil penalty amount of \$15,000.

With the exception of sources and devices containing hydrogen-3 (tritium), the highest activity sources and devices (i.e., those with activities greater than 3.7×10^4 MBq (1 Curie)), have an approximate average cost of disposal of \$15,000. The base civil penalty amount for loss or improper disposal of these sources and devices has been set at \$45,000, which is three times the average cost of disposal.

The Commission believes that normally a civil penalty at least in the amount of the base civil penalty is appropriate in the case of loss, abandonment, or improper transfer or disposal of a sealed source or device. This is to ensure that the associated enforcement action properly reflects the significance of such violations. This change has been implemented in Section VII.A.1(g) of the Enforcement Policy. However, NRC may mitigate or escalate a civil penalty amount, as provided in the Enforcement Policy, based on the merits of a specific case. In doing so, NRC may consider information concerning the actual expected cost of authorized disposal and the actual consequences of the loss, abandonment, or improper transfer or disposal.

Scope

The base civil penalties established in this change to the Enforcement Policy apply to violations that involve loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or the type of licensee.

Paperwork Reduction Act

The NRC Enforcement Policy does not contain a new or amended information collection requirement and therefore is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is amended to read as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

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VI. Enforcement Actions

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C. Civil Penalty

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1. Base Civil Penalty

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, contractors, and other persons. Violations that involve loss, abandonment, or improper transfer or disposal of a sealed source or device are treated separately, regardless of the use or the type of licensee. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs, and for loss, abandonment or improper transfer or disposal of a sealed source or device. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider necessary increases or decreases on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

TABLE 1A.—BASE CIVIL PENALTIES

*	*	*	*	*
f. Loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or type of licensee: ³				
1. Sources or devices with a total activity greater than 3.7×10^4 MBq (1 Curie), excluding hydrogen-3 (tritium)				\$45,000
2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i)				\$15,000
3. Sources and devices not otherwise described above				\$6,000

³These base civil penalty amounts have been determined to be approximately three times the average cost of disposal. For specific cases, NRC may adjust these amounts to correspond to three times the actual expected cost of authorized disposal.

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VII. Exercise of Discretion

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A. Escalation of Enforcement Sanctions

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1. Civil Penalties

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(g) Cases involving the loss, abandonment, or improper transfer or disposal of a sealed source or device. Notwithstanding the outcome of the normal civil penalty assessment process, these cases normally should result in a civil penalty of at least the base amount; or

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Dated at Rockville, Maryland, this 8th day of December 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

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POSTAL RATE COMMISSION

[Docket No. R2000-1; Order No. 1301]

Notice and Order of Request for Reconsideration of Commissions Docket No. R2000-1 Opinion and Recommendation Decision

AGENCY: Postal Rate Commission.

ACTION: Notice and order on request for reconsideration of Commission's docket no. R2000-1 opinion and recommendation decision.

SUMMARY: This document informs the public that the Governors of the Postal Service have requested reconsideration of the Commission's opinion and recommended decision in docket no. R2000-1. It also establishes deadlines for comments from the Postal Service and other rate case participants on stated issues.

DATES: Initial Postal Service comments are due January 3, 2001; participants' comments are due January 24, 2001; and Postal Service reply comments are due January 31, 2000. Alternative deadlines are identified in the Supplementary Information section.

ADDRESSES: Send comments to the attention of Margaret P. Crenshaw, Secretary, 1333 H Street NW., Suite 300, Washington, DC 20268-0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

A. Authority to Reconsider the Decision

39 U.S.C. 3625(d).

B. Background

On December 5, 2000 the Governors of the United States Postal Service issued two decisions on the Commission's November 13, 2000 opinion and recommended decision in docket no. R2000-1. The Postal Service provided separate notices with these two decisions indicating that they had been mailed to the service list in docket no. R2000-1.

The decision of the Governors of the United States Postal Service on the recommended decision of the Postal Rate Commission on postal rate and fee changes, docket no. R2000-1 (decision of the Governors), states at 1, "we allow the recommended decision to take effect, under protest, and return it to the Commission for reconsideration and a further recommended decision as expeditiously as possible." By this order, the Commission initiates action to reconsider the Postal Service request in this docket, consistent with 39 U.S.C. 3624.¹

Participants in docket no. R2000-1 will be accorded a reasonable opportunity to provide their views on each of the issues on which reconsideration is sought. These issues include the rates that would be recommended should the Commission, on reconsideration, determine that it should adjust its findings on the issues identified by the Governors.

The decision of the Governors notes at 2, that the Commission directed the Postal Service to provide updated cost information during the course of the hearings in this proceeding, and that the

information provided by the Service "suggested that the projected test year revenue requirement had increased to over \$69.8 billion." The Governors' subsequent finding "that the revenue requirement is \$69.832 billion[.]" *id.* at 12, evidently relies on the updated costs used in the Commission's recommended decision of November 13, as does their determination of a \$1.695 billion contingency amount, versus the \$1.680 billion originally requested. The rates recommended by the Commission produce \$68.819 billion, a difference of more than one billion dollars.

The Governors have advised that the test year revenue requirement for the Postal Service should be increased by including the \$200 million field reserve, adding \$97 million in supervisor costs, and increasing the provision for contingencies by \$687 million.² The Governors also protest that rates should be increased to recover the purported cost consequences of increased volumes of heavier First-Class Mail, to correct a perceived error in the computation of bound printed matter rates, to offset revenues lost if nonprofit standard mail rates are reduced to conform better with amended 39 U.S.C. 2626 and, possibly, to allow for a reduction in certain parcel post surcharges.

The Commission will review the evidentiary record and the applicable legal standards applicable to each of these seven issues. The first step in this process will be to call upon the Postal Service to provide detailed statements on each of these issues, setting out evidentiary and legal support for the outcomes deemed proper by the Governors. Other participants, having been fully informed of the rationales underlying the decision of the governors, will then have an opportunity to provide their views. Finally, the Postal Service will be given a last opportunity to respond to arguments presented by other participants.

Throughout the proceeding to this point the Postal Service has indicated that it sought "only the revenue goals embodied in its Request." Postal Service Brief at 1-13. Consistent with this position, it urged the Commission to recommend the rate and fee proposals embodied in the Postal Service request of January 12, 2000.³ *Id.* at 1-14. In its

initial submission in response to this order, the Postal Service is to present its views on the appropriate portions of total revenues that each subclass and service should contribute toward collecting sufficient test year revenues in light of the Governors' revenue requirement finding. The Service may also suggest specific rates that would achieve these subclass and service specific revenue goals.

Participants may also comment on how to recognize other matters referred to in the decision of the Governors. For example, the Governors apparently view their rejection of the proposed Priority Mail flat rate envelop classification change and the final FY 2000 deficit as altering the perceived test year revenue deficiency.

The Governors have requested that the reconsideration process be conducted as expeditiously as possible. Nonetheless, this process will be most effective if all participants have adequate time to prepare thorough, carefully reasoned presentations. Therefore, the Commission will allow at least three weeks for the submission of views from each participant. Recognizing that the year-end holiday season is rapidly approaching, the deadline for the submission of initial Postal Service comments will be extended further, until January 3, 2001. Other participants' comments are to be submitted by January 24, 2001, and the final Postal Service response will be due on January 31, 2001.

It is of course quite possible that the Postal Service already prepared much of the analysis needed for the initial Postal Service comments during the process of assisting the Governors. If the Postal Service provides its initial comments on or before December 20, 2000, then the date for participant comments shall be January 12, 2001, and the date for the final Postal Service response will be January 19, 2001.

It is ordered:

The Postal Service and other participants shall provide their views on the Decision of the Governors requesting reconsideration in accordance with the schedule set out in the body of this order.

Dated: December 12, 2000.

Margaret P. Chenshaw,
Secretary.

[FR Doc. 00-32099 Filed 12-15-00; 8:45 am]

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¹ A separate decision of the Governors of the United States Postal Service on the recommended decisions of the Postal Rate Commission on select mail classification matters, docket no. R2000-1 did not request reconsideration of any issue, and thus is not before the Commission except as it impacts on test year after rates revenues.

² The \$687 million is derived by subtracting the \$1.012 [billion] figure allowed in the Commission opinion and recommended decision from the \$1.695 [billion] figure shown in the decision of the Governors at 12.

³ The Postal Service did not support lower rates for Periodicals and rates for preferred mail that conform with 39 U.S.C. 3626.