

inform such person of his opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the election under paragraph (1).

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

**(d) Limitation for not-for-profit institutions**

(1) Notwithstanding subsection (a), in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection (a) may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract under which the violation occurs.

(2) For purposes of this section, the term "not-for-profit" means that no part of the net earn-

ings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.

(Aug. 1, 1946, ch. 724, title I, §234A, as added Pub. L. 100-408, §17, Aug. 20, 1988, 102 Stat. 1081; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 106-65, div. C, title XXXI, §3147(c), Oct. 5, 1999, 113 Stat. 938; Pub. L. 109-58, title VI, §610(a), (b), Aug. 8, 2005, 119 Stat. 781.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, known as the Atomic Energy Act of 1954, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

2005—Subsec. (b)(2). Pub. L. 109-58, §610(a), struck out at end "In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section."

Subsec. (d). Pub. L. 109-58, §610(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) provided that the provisions of this section would not apply to the University of Chicago for activities associated with Argonne National Laboratory; the University of California for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory; American Telephone and Telegraph Company and its subsidiaries for activities associated with Sandia National Laboratories; Universities Research Association, Inc. for activities associated with FERMI National Laboratory; Princeton University for activities associated with Princeton Plasma Physics Laboratory; the Associated Universities, Inc. for activities associated with the Brookhaven National Laboratory; and Battelle Memorial Institute for activities associated with Pacific Northwest Laboratory.

1999—Pub. L. 106-65 inserted "safety" before "regulations" in section catchline.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title VI, §610(c), Aug. 8, 2005, 119 Stat. 782, provided that: "The amendments made by this section [amending this section] shall not apply to any violation of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) occurring under a contract entered into before the date of enactment of this section [Aug. 8, 2005]."

EFFECTIVE DATE

Section effective Aug. 20, 1988, but inapplicable to any violation occurring before Aug. 20, 1988, see section 20 of Pub. L. 100-408, set out as an Effective Date of 1988 Amendment note under section 2014 of this title.

**§ 2282b. Civil monetary penalties for violations of Department of Energy regulations regarding security of classified or sensitive information or data**

**(a) Persons subject to penalty**

Any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this chapter relating to the safeguarding or security of Restricted Data or other classified or sensitive information shall be subject to a civil

penalty of not to exceed \$100,000 for each such violation.

**(b) Fee or payment reductions for violations**

The Secretary shall include in each contract with a contractor of the Department provisions which provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information. The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

**(c) Powers and limitations**

The powers and limitations applicable to the assessment of civil penalties under section 2282a of this title, except for subsection (d) of that section, shall apply to the assessment of civil penalties under this section.

**(d) Application to certain entities**

In the case of an entity specified in subsection (d) of section 2282a of this title—

(1) the assessment of any civil penalty under subsection (a) against that entity may not be made until the entity enters into a new contract with the Department of Energy or an extension of a current contract with the Department; and

(2) the total amount of civil penalties under subsection (a) in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.

(Aug. 1, 1946, ch. 724, title I, § 234B, as added Pub. L. 106-65, div. C, title XXXI, § 3147(a), Oct. 5, 1999, 113 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 919, known as the Atomic Energy Act of 1954, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

EFFECTIVE DATE

Pub. L. 106-65, div. C, title XXXI, § 3147(b), Oct. 5, 1999, 113 Stat. 938, provided that: “Subsection a. of section 234B of the Atomic Energy Act of 1954 [42 U.S.C. 2282b(a)], as added by subsection (a), applies to any violation after the date of the enactment of this Act [Oct. 5, 1999].”

**§ 2282c. Worker health and safety rules for Department of Energy nuclear facilities**

**(a) Regulations required**

**(1) In general**

The Secretary shall promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors covered by agreements of indemnification under section 2210(d) of this title, after public notice and opportunity for comment under section 553 of title 5 (commonly known as the “Administrative Procedure Act”). Such regulations shall, sub-

ject to paragraph (3), provide a level of protection for workers at such facilities that is substantially equivalent to the level of protection currently provided to such workers at such facilities.

**(2) Applicability**

The regulations promulgated under paragraph (1) shall not apply to any facility that is a component of, or any activity conducted under, the Naval Nuclear Propulsion Program provided for under Executive Order No. 12344, dated February 1, 1982 (as in force pursuant to section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98-525)).

**(3) Flexibility**

In promulgating the regulations under paragraph (1), the Secretary shall include flexibility—

(A) to tailor implementation of such regulations to reflect activities and hazards associated with a particular work environment;

(B) to take into account special circumstances at a facility that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse; and

(C) to achieve national security missions of the Department of Energy in an efficient and timely manner.

**(4) No effect on health and safety enforcement**

This subsection does not diminish or otherwise affect the enforcement or the application of any other law, regulation, order, or contractual obligation relating to worker health and safety.

**(b) Civil penalties**

**(1) In general**

A person (or any subcontractor or supplier of the person) who has entered into an agreement of indemnification under section 2210(d) of this title (or any subcontractor or supplier of the person) that violates (or is the employer of a person that violates) any regulation promulgated under subsection (a) shall be subject to a civil penalty of not more than \$70,000 for each such violation.

**(2) Continuing violations**

If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty under paragraph (1).

**(c) Contract penalties**

**(1) In general**

The Secretary shall include in each contract with a contractor of the Department who has entered into an agreement of indemnification under section 2210(d) of this title provisions that provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any regulation promulgated under subsection (a).

**(2) Contents**

The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.