

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 2****Policy and Procedure for Enforcement Actions; Removal**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is removing its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) from the Code of Federal Regulations because the Enforcement Policy is not a regulation.

**DATES:** This action is effective on June 30, 1995.

Submit comments on or before August 14, 1995. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received 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) 415-2741.

**SUPPLEMENTARY INFORMATION:** On May 13, 1994, the NRC's Executive Director for Operations established a review team to assess the NRC enforcement program. The review team report, NUREG-1525, <sup>1</sup> "Assessment of the

NRC Enforcement Program," was published in April 1995. The team report, in Recommendation II. G-3, recommended that the Enforcement Policy be removed from the Code of Federal Regulations (CFR) because the Enforcement Policy is not a regulation.

The NRC Enforcement Policy has been codified at 10 CFR Part 2, Appendix C to provide widespread dissemination of the Commission's Enforcement Policy. However, after the Commission first published the Enforcement Policy on October 7, 1980 (45 FR 66754), the Commission has maintained that the NRC Enforcement Policy is a policy statement and not a regulation. The Commission's reason for having a policy statement rather than a rule was explained in the Statement of Considerations that accompanied the publication of the 1982 Enforcement Policy. The Commission stated then:

An underlying basis of this policy that is reflected throughout it is that the determination of the appropriate sanction requires the exercise of discretion such that each enforcement action is tailored to the particular factual situation. In view of the discretion provided, the enforcement policy is being adopted as a statement of general policy rather than as a regulation, notwithstanding that the statement has been promulgated with notice and comment procedures. A general statement of policy will permit the Commission maximum flexibility in revising the policy statement and it is expected that the statement, especially the supplement, will be revised as necessary to reflect changes in policy and direction of the Commission (47 FR 9989; March 9, 1992).

For the same reasons, the Commission continues to hold the view that the Enforcement Policy is a policy statement. However, at least one court, in considering whether an enforcement policy was a policy statement or a regulation, noted that if the policy were published in the CFR, it would be properly treated as a regulation because the CFR is reserved for documents "having general applicability and legal

effect." (Brock v. Cathedral Bluffs Shale Oil Co., 796 F.2d 533, 539 (D.C. Cir. 1986) citing 44 U.S.C. 1510 (1982)).

Therefore, because the Enforcement Policy is not a regulation, the Commission is removing it from the Code of Federal Regulations. Revisions of the Enforcement Policy will continue to be published in the **Federal Register**.

To ensure widespread dissemination, the Enforcement Policy will be provided to licensees, made available on an electronic bulletin board, and published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions."

**Paperwork Reduction Act Statement**

This policy statement contains no information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

**List of Subjects in 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.

**PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS**

1. The authority citation for part 2 continues to read, in part, as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841)\* \* \*.

*Appendix C to Part 2 [Removed]*

2. Appendix C to Part 2 is removed.

Dated at Rockville, MD, this 23rd day of June, 1995.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission.*

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<sup>1</sup> Copies of NUREG-1525 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port

Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555-0001.