

NUCLEAR REGULATORY COMMISSION

[NUREG-1600, Rev. 1]

NRC Enforcement Policy; Enforcement Action Against Nonlicensees Under 10 CFR Part 72

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing a revision to its Enforcement Policy (NUREG-1600, Rev. 1, "General Statement of Policy and Procedure for NRC Enforcement Actions") to clarify that enforcement action may be taken against nonlicensees for violations of 10 CFR part 72.

DATES: This action is effective October 15, 1999, while comments are being received. Submit comments on or before November 29, 1999.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 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: Richard W. Borchardt, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415-2741.

SUPPLEMENTARY INFORMATION: The Commission's "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy or Policy) (63 FR 26630, May 13, 1998) primarily addresses violations by licensees and certain nonlicensed persons, including certificate holders, as discussed further in footnote 3 to section I, Introduction and Purpose, and in section X, Enforcement Action Against Nonlicensees.

In 10 CFR part 72 of the NRC's regulations addresses licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste. Over the past two years, the Commission has observed problems with the performance of several certificate holders and their contractors and subcontractors in the manufacture of spent fuel storage casks.

The Commission has concluded that additional enforcement sanctions; *e.g.*, issuance of Notices of Violations (NOVs) and orders, are required to address the performance problems which have occurred in the spent fuel storage industry. Also, concurrent with publication of this change to the Enforcement Policy, the Commission is amending part 72 to expand its applicability to holders of, and applicants for, Certificates of Compliance (CoCs). While CoCs are legally binding documents, certificate holders or applicants for a CoC have not clearly been brought within the scope of certain part 72 requirements, and the NRC has not had a clear basis to cite these persons for violations of part 72 requirements in the same way it treats licensees. When the NRC has identified a failure to comply with part 72 requirements by these persons, it has taken administrative action by issuing a Notice of Nonconformance (NON) or a Demand for Information rather than an NOV. With these changes to part 72, the Commission will be in a position to issue NOVs and Orders to certificate holders and applicants. While the part 72 changes do not apply to contractors and subcontractors certain existing regulations provide for enforcement action to be taken against contractors and subcontractors, *e.g.*, parts 72.10 and 72.12.

A Notice of Violation (NOV) is a written notice that sets forth one or more violations of a legally binding requirement. The NOV effectively conveys to both the person violating the requirement and the public that a violation of a legally binding requirement has occurred and permits use of graduated severity levels to convey more clearly the safety significance of the violation. Therefore, in addition to the changes to part 72, the Commission is amending part X of the Enforcement Policy, Enforcement Action Against Non-Licensees, to make clear that nonlicensees who are subject to specific regulatory requirements; *e.g.*, part 72, will be subject to enforcement action, including NOVs and orders. The final part 72 rule does not provide authority for issuing civil penalties to nonlicensees other than that already provided under the Deliberate Misconduct Rule in § 72.12.

Paperwork Reduction Act

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing

requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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 of OMB.

Accordingly, the NRC Enforcement Policy published at 63 FR 26632 is amended by revising the last paragraph of section X to read as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

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X. Enforcement Action Against Non-Licensees

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When inspections determine that violations of NRC requirements have occurred, or that contractors have failed to fulfill contractual commitments (*e.g.*, 10 CFR part 50, appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their contractors have programs that meet applicable requirements. Notices of Violation will be issued for contractors who violate 10 CFR part 21. Civil penalties will be imposed against individual directors or responsible officers of a contractor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Violation or orders will be used against nonlicensees who are subject to the specific requirements of part 72. Notices of Nonconformance will be used for contractors who fail to meet commitments related to NRC activities but are not in violation of specific requirements.

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For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 5th day of October, 1999.

Andrew L. Bates,

Acting Secretary of the Commission.

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