

NUCLEAR REGULATORY COMMISSION

[NUREG-1600]

Revision of NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing a revision to its Enforcement Policy (NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions") to clarify that enforcement action may be taken against non-licensees for violations of 10 CFR Part 71.

DATES: Consistent with the rulemaking to revise 10 CFR Part 71, this action is effective (insert date 1 year after the date of publication).

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555 - 0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC Public Document

Room, Room O1F21, 11555 Rockville Pike, Rockville, MD 20852. Comments also may be sent electronically to Mr. Lesar, email mtl@nrc.gov.

The NRC maintains the current Enforcement Policy on its web site at www.nrc.gov, select **What We Do, Enforcement**, then **Enforcement Policy**.

FOR FURTHER INFORMATION CONTACT: Frank J. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 -0001, (301) 415-2741, email (fjc@nrc.gov).

SUPPLEMENTARY INFORMATION: The Commission's Enforcement Policy primarily addresses violations by licensees and certain non-licensed persons, including certificate holders, as discussed further in footnote 3 to Section I, Introduction and Purpose, and in Section X, Enforcement Action Against Non-licensees. In 10 CFR Part 71, the NRC's regulations address licensing requirements for packaging and transport of radioactive material. For several years, the Commission has observed problems with the performance of some certificate holders and their contractors and subcontractors in the packaging and transport of radioactive material. 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 packaging and transportation of radioactive material. Therefore, concurrent with publication of this change to the Enforcement Policy, the Commission is amending 10 CFR Part 71 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 had not clearly been brought within the scope of

certain Part 71 requirements, and the NRC has not had a clear basis to cite these persons for violations of Part 71 requirements in the same way it treats licensees. When the NRC has identified a failure to comply with Part 71 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 71, the Commission will be in a position to issue NOVs and Orders to certificate holders and applicants.

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 10 CFR Part 71, the Commission is amending Part X of the Enforcement Policy, Enforcement Action Against Non-Licensees, to make clear that non-licensees who are subject to specific regulatory requirements; e.g., Part 71, will be subject to enforcement action, including NOVs and Orders. The final Part 71 rule does not provide authority for issuing civil penalties to nonlicensees other than that already provided under the Deliberate Misconduct Rule in Sec. 71.8.

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

X. Enforcement Action Against Non-Licensees

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 non-licensees who are subject to the specific requirements of Parts 71 and 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.

Dated at Rockville, Maryland, this _____ day of _____, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary for the Commission