

From: Richard Dudley ^{NRR}
 To: Geary Mizuno; Renee Pedersen
 Date: 3/23/04 9:05AM
 Subject: Re: Markey/Dingell Question 2.f (REVISION)

Release
NRR

I agree that we have not responded to the specific question on "Have we ever before changed regs because it cost too much to enforce them." I don't know what the answer is. It is possible that the answer is "no" since enforcement is not costly to the NRC. If this is the case, we can answer "no" but I think we should also include my response. If OGC and OE and the DIPM inspection folks agree that the answer is "no", then let's say so. If not, then we need a semi-responsive answer where we say we don't know and we are unwilling to expend the resources needed to undertake a thorough review of the history of all our rule changes.

The situation is similar in Q. 2.e where we are asked if we have ever changed rules before to allow non-compliant licensees to avoid enforcement. Here I think we may have amended some rules to allow non-compliant licensees to avoid enforcement. It may have been done on the basis that compliance cost more than we had expected and knowing this we determined that the costly requirement was not needed for adequate protection. Again, I don't know. I have not been able to think of a rule change to relieve burden that was initiated with licensees already out of compliance.

Since I can't answer either of these 2 questions, I would like to get some help from OGC, DIPM inspection folks, or OE. **Renee, OE is a major player in these Q's and we need to hear from you to know what OE is thinking....** [subtle hint :-)] Geary, I'm also waiting for your recommendations and/or guidance on these 2 questions.

Dick Dudley

>>> Geary Mizuno ^{Ge} 03/23/04 07:55AM >>>
 Dick:

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While this answer may be useful in answering the bases for the staff's enforcement action discretion recommendation, it is not at all responsive to the question.

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>>> Richard Dudley ^{NRR} 03/22/04 09:08AM >>>
 I think I have improved the last response by talking a little more about safety.

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Sunil/Ray/Phil: Only the responsible technical staff has the qualifications to talk about relative safety so even though I have made some assertions, please do not let this response go forward unless you feel you could testify before Congress in support of this answer. If there is a hearing, the fire protection specialists and not the rulemakers will be in the forefront.

Dick

CC: Dtd; Eileen McKenna; Phil Qualls; Rani Franovich; Ray Gallucci; Sunil Weerakkody

CCC-14