

**NUCLEAR REGULATORY COMMISSION**

**NRC Enforcement Policy; Proposed Plan for Major Revision**

**AGENCY:** Nuclear Regulatory Commission

**ACTION:** Notice of proposed revision; solicitation of written comments.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is examining its Enforcement Policy (Enforcement Policy or Policy) and plans a major revision to clarify use of enforcement terminology and address enforcement issues in areas currently not covered in the Policy, including, for example, the agency's use of Alternative Dispute Resolution (ADR) in enforcement cases. The NRC requests comments on (1) what specific topics, if any, should be added or removed from the Policy; and (2) what topics currently addressed in the Policy, if any, require additional guidance. The NRC is soliciting written comments from interested parties including public interest groups, states, members of the public and the regulated industry, i.e., both reactor and materials licensees, vendors, and contractors. This request is intended to assist the NRC in its review of the Enforcement Policy; NRC does not intend to modify its emphasis on compliance with NRC requirements.

**DATES:** The comment period expires **Insert date that is 60 days after publication of this notice**. This time period allows for the public to respond to the specific questions posed above in this notice as well as the opportunity to provide general comments on the revision of the Policy. 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:** Comments on this proposed revision submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including

information such as social security numbers or other sensitive personal information in your submission. You may submit comments by any one of the following methods:

**Mail 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.

**E-mail comments to:** [nrcprep@nrc.gov](mailto:nrcprep@nrc.gov).

**Hand deliver comments to:** 11555 Rockville Pike, Rockville, MD 20852, between the hours of 7:45 am and 4:15 pm, Federal workdays.

**FOR FURTHER INFORMATION CONTACT:** Maria E. Schwartz, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; [mes@nrc.gov](mailto:mes@nrc.gov), (301) 415-1888.

## **SUPPLEMENTARY BACKGROUND:**

### **I. Background**

The NRC Enforcement Policy contains the enforcement policy and procedures that the U.S. Nuclear Regulatory Commission (NRC) uses to initiate and review enforcement actions in response to violations of NRC requirements. The primary purpose of the Enforcement Policy is to support the NRC's overall safety mission, i.e., to protect the public health and safety and the environment, and to assure the common defense and security. Because it is a policy statement and not a regulation, the Commission may deviate from this statement of policy as appropriate under the circumstances of a particular case.

The Enforcement Policy was first published in the *Federal Register* on October 7, 1980 (46 FR 66754), as an interim policy. The Commission published a final version of the Policy on March 9, 1982 (47 FR 9987). The Enforcement Policy has been modified on a number of occasions to address changing requirements and additional experience and on June 30, 1995 (60 FR 34381), a major revision of the Policy was published. The NRC maintains the

Enforcement Policy on its Web site at <http://www.nrc.gov>; select **What We Do, Enforcement**, then **Enforcement Policy**.

The goal of the Policy is to support the NRC's safety mission by emphasizing the importance of compliance with regulatory requirements, and encouraging prompt identification, and prompt, comprehensive correction of violations. Revisions to the Policy have consistently reflected this commitment: for example, in 1998, the NRC changed its inspection procedures to address the Reactor Oversight Process (ROP) initiative. This has been reflected in the Policy's use of risk insights to assess the significance of violations whenever possible. While this may result in fewer Notices of Violation being issued (because of a greater emphasis on the use of non-cited violations), it has not reduced the agency's emphasis on the importance of compliance with NRC requirements. Another example involves the NRC's development of a pilot program in 2005 which focuses on the use of Alternative Dispute Resolution (ADR) for certain kinds of enforcement cases. The NRC enforcement staff has used ADR to resolve reactor, fuel facility, and materials enforcement cases. While the use of ADR in enforcement raises unique issues, it emphasizes creative, cooperative approaches to handling conflicts in lieu of adversarial procedures.

The NRC is again considering a major revision of its Enforcement Policy. As discussed above, since it was first published in 1980, sections of the Policy have been updated and additional sections have been included. Terms used under conventional enforcement are now associated with the significance determination process (SDP) performed under the ROP as well; therefore, the use of these terms must be clarified. In addition, there are areas that are not directly addressed in the Supplements of the Enforcement Policy, such as the enforcement issues associated with combined licenses for the proposed new reactors and the construction phase of proposed fuel facilities as well as recently promulgated requirements in the

safeguards and security area. These areas must be addressed either by adding them to the text of the existing Policy and Supplements or by revising the Policy and developing new Supplements. Finally, the format of the Enforcement Policy may need to be reorganized to reflect the changes that have been made to it.

## **II. Proposed Plan**

The NRC envisions revising the Enforcement Policy so that the policy statement and Supplements addressing conventional enforcement would be followed by sections addressing the enforcement processes that differ in some way from conventional enforcement. For example, currently the discussion in the Policy addressing Predecisional Enforcement Conferences (PECs) contains information regarding attendance by a whistle blower. In fact, third party (whistle blower) invitations are unique to discrimination cases and could reasonably be addressed, along with all of the other unique discrimination issues, in a self-contained section addressing discrimination enforcement cases. Providing self-contained sections would make it easier to add (and potentially delete) them in the future, if necessary. Under this approach, the ROP would be the first “variation” on conventional enforcement. If the agency takes this approach, Sections IV through VII or VIII of the current Enforcement Policy could be combined in the conventional enforcement process which would be followed by the NRC’s policy regarding the use of the ROP in enforcement, etc.

The following draft Table of Contents would be consistent with the approach outlined above:

Preface

Background and Definitions

I. Introduction and Purpose

II. Statutory Authority and Procedural Framework

### III. Responsibilities

### IV. The Enforcement Process

- A. Assigning Severity Level (Remove section IV.5 which discusses ROP)
- B. Severity Level vis-a-vis Activity Areas
- C. Predecisional Enforcement Conferences (Remove discussion involving discrimination cases)
- D. Disposition of Violations (Remove section VI.A.1 and combine reactor non-cited violations (NCVs) with all other NCVs such that there is one discussion of NCVs. Put the reactor cases associated with ROP in the ROP section.)
  - 1. Wrongdoing
  - 2. Inaccurate and Incomplete Information
- E. Formal Enforcement Sanctions
  - 1. Notices of Violation
  - 2. Civil Penalties
  - 3. Orders
- F. Administrative Enforcement Sanctions
  - 1. Demands for Information
  - 2. Confirmatory Action Letters
  - 3. Letters of Reprimand
- G. Exercise of Enforcement Discretion
  - 1. Escalation of Enforcement Sanctions
  - 2. Mitigation of Enforcement Sanctions
  - 3. Notices of Enforcement Discretion (NOEDs) for Power Reactors and Gaseous Diffusion Plants
  - 4. The Use of Discretion During the Adoption of New Requirements

- H. Public Disclosure of Enforcement Actions (existing Sections XII)
- I. Reopening Closed enforcement Actions, (existing Section XIII)
- V. Enforcement and the Reactor Oversight Process (ROP): Operating Reactors
- VI. Enforcement Actions Involving Individuals (Incorporate existing Section XI, “Referrals to the Department of Justice” into this Section.)
- VII. Discrimination
- VIII. Alternative Dispute Resolution (ADR)
- IX. Follow up with any additional subject areas that may warrant a few paragraphs segregated from the main policy discussion, e.g., security/safeguards, the lost source policy, interim enforcement regarding certain fire protection issues.
- X. Supplements
  - A. Health Physics
  - B. Reactors
    - 1. Operating reactors
    - 2. Part 50 Facility Construction
    - 3. Part 52 Combined Licenses
    - 4. Fitness for Duty
  - C. Facility Security and Safeguards -
    - 1. Physical Protection of Plants and Materials
    - 2. Facility Security Clearance and Safeguarding of National Security Information and Restricted Data
  - D. Fuel Cycle and Materials Operations
    - 1. Gaseous Diffusion Plants
    - 2. Gas Centrifuge Uranium Recovery Facilities
    - 3. Mixed Oxide (MOX) Fuel Fabrication Facility

- E. Materials Safeguards
- F. Emergency Preparedness
- G. Transportation
- H. Waste Disposal
- I. Miscellaneous Matters

The Commission is aware that enforcement actions deliver regulatory messages. Based on this tenet, the goals of this revision are to ensure that the Enforcement Policy (1) continues to reflect the Commission's focus on safety, i.e., the need for licensees to identify and correct violations, to address root causes, and to be responsive to initial opportunities to identify and prevent violations; (2) appropriately addresses the various subject areas that the NRC regulates; and (3) provides a framework that supports consistent implementation, recognizing that each enforcement action is dependent on the specific circumstances of the case.

Dated at Rockville, MD, this 17th day of January, 2007.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,  
Director, Office of Enforcement.