

NUCLEAR REGULATORY COMMISSION

[NRC-2012-XXXX]

NRC ENFORCEMENT POLICY

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is publishing a revision to its Enforcement Policy (Enforcement Policy or Policy) to incorporate changes directed by the Commission, to make other changes proposed and evaluated by the staff, and to make minor edits.

DATES: This revision is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments on this revision should be submitted on or before [INSERT DATE: 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*], and will be considered by the NRC before the next Enforcement Policy revision.

ADDRESSES: Please include Docket ID NRC-2012-XXXX in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see “Submitting Comments and Accessing Information” in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2012-XXXX. Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

- **Fax comments to:** RADB at 301-492-3446.

FOR FURTHER INFORMATION CONTACT: Nicole Coleman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301-415-1048, e-mail: Nicole.Coleman@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this action using the following methods:

- **NRC's Public Document Room (PDR):** The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- **NRC's ADAMS:** Publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The Enforcement Policy is accessible under ADAMS Accession No. MLXXXXXXXXXX.

- **Federal Rulemaking Web Site:** Public comments and supporting materials related to this Policy revision can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2012-XXXX.

The NRC maintains the Enforcement Policy on its Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

II. Background

The purpose of this Policy revision is: 1) to incorporate changes directed by the Commission in Staff Requirements-SECY-09-0190; 2) to make other changes proposed and evaluated by the staff; and 3) to make minor edits.

On December 30, 2009, in SECY-09-0190 (ADAMS Accession No. ML093200520), the NRC staff submitted to the Commission a proposed major revision of the Enforcement Policy. In SECY-09-0190, the NRC staff committed to provide an opportunity for public comments on the revision after it had been in effect for about 18 months. In Staff Requirements Memorandum-SECY-09-0190, the Commission approved the revised Policy and directed the NRC staff to evaluate certain items for inclusion in the next proposed revision to the Policy. On September 30, 2010, the NRC published the revised Policy in the *Federal Register* (75 FR 60485).

In addition to the direction given to the NRC staff in Staff Requirements Memorandum-SECY-09-0190, the NRC staff evaluated other Policy changes that were presented to the Commission for approval and inclusion in the 2012 Policy revision.

The NRC staff solicited comments on proposed changes to the Policy in documents published in the *Federal Register* on September 6, 2011 (76 FR 54986) and December 6, 2011 (76 FR 76192).

III. Summary of Substantive Changes to the Enforcement Policy

1. Credit for Fuel Cycle Licensee Corrective Action Programs

The NRC is revising Section 2.3.2, Non-Cited Violation, to provide fuel cycle licensees (and all other licensees or nonlicensees) with credit for a corrective action program (CAP) for certain severity level (SL) IV violations. Presently, this CAP credit for certain SL IV violations is only available to power reactor licensees. This revision would allow fuel cycle licensees (and all

other licensees or nonlicensees) with credit for an NRC-approved CAP to have NRC-identified SL IV violations treated as noncited violations (NCVs) if certain other criteria are met.

2. Noncited Violation Credit to Nonlicensees

The NRC is revising Section 2.3.2.b, All Other Licensees, to clarify that NCVs may also be issued to nonlicensees when they meet the NCV criteria stated in Section 2.3.2.b.

3. Civil Penalties

The NRC is making several changes to Section 2.3.4, Civil Penalty, related to the civil penalty assessment process. Under the current Policy, the NRC will assess at least a base civil penalty for violations involving loss of control of radioactive materials. The NRC is revising the Policy to remove such language. The intent is to maintain the existing lost source policy to issue at least a civil penalty while giving the NRC staff the flexibility to disposition those cases where a licensee has lost NRC regulated material, but took immediate action to recover it, in a timely manner, with little or no risk to the public while the material was not in the licensee's control. In such cases where loss of control is the issue, rather than actual loss of material, the normal civil penalty assessment process would be used. Notwithstanding the normal civil penalty assessment process, the Policy will also allow the use of discretion and imposition of a civil penalty in cases in which a licensee has lost required control of its regulated radioactive material.

The NRC is revising the Policy to also provide criteria and examples for the use of daily civil penalties. This revision will provide factors for the NRC staff to consider when evaluating the appropriateness of daily civil penalties for continuing violations of at least moderate significance (i.e. at least a SL III).

The NRC is revising the Policy to point out that civil penalties are considered for SL I, II, and III violations. However, this revision emphasizes that the civil penalty process described in Section 2.3.4 should be followed to determine the appropriateness of any civil penalty.

The NRC is also adding a new section (i.e., Section 4.3.1, Civil Penalties to Individuals Who Release Safeguards Information) to provide an assessment tool for the NRC staff to determine civil penalties for violations by individuals who release safeguards information (SGI). The NRC is also revising Section 8.0, Table of Base Civil Penalties, to include a base civil penalty of \$3,500 for individuals who release SGI.

4. Orders

The NRC is revising Section 2.3.5, Orders, to clarify that Orders may be immediately effective, without prior opportunity for a hearing, whenever the NRC determines that the public health, safety interest, or common defense and security so requires, or if the violation or conduct causing the violation is willful.

5. Inaccurate and Incomplete Information

The NRC is adding a new Section 2.3.11, Inaccurate and Incomplete Information, to provide guidance to the NRC staff for issues involving inaccurate and incomplete information. The wording for this new section is taken essentially verbatim from the November 28, 2008, version of the Policy, Section IX, Inaccurate and Incomplete Information. This section was not included in the September 30, 2010, revision to the Policy.

6. Reporting of Defects

The NRC is adding a new Section 2.3.12, Reporting of Defects and Noncompliance, to provide guidance to the NRC staff for issues involving contractors that supply products or services for use in nuclear activities. The wording for this new section is taken essentially verbatim from the November 28, 2008, version of Policy, Section X, Enforcement Action Against Nonlicensees. This section was not included in the September 30, 2010, revision to the Policy.

7. Predecisional Enforcement Conference

The NRC is revising Section 2.4.1, Predecisional Enforcement Conference, in its entirety to provide clear and consistent guidance that allows licensees and individuals to respond to apparent violations before final escalated enforcement action is taken. The revised text states,

in part, that to the extent practicable, the NRC will consider the licensee's response before taking enforcement action.

8. Alternative Dispute Resolution

The NRC is revising Section 2.4.3, Alternative Dispute Resolution, to update the alternative dispute resolution guidance.

9. Enforcement Actions Involving Individuals

The NRC is revising Section 4.0, Enforcement Actions Involving Individuals, to provide guidance for handling potentially damaging or disqualifying information involving an individual's trustworthiness and reliability which may affect an individual's unescorted access authorization to licensee facilities.

10. Violation Examples

The NRC is revising Section 6.0, Violation Examples, by adding several new violation examples and revising several of the current examples. The sub-sections within Section 6.0 that are being revised include the violation examples related to licensed operators, facility construction (Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 50 and 52 licensees and fuel cycle facilities), emergency preparedness, inaccurate and incomplete information, and failure to make a required report. The NRC is adding violation examples related to export and import activities.

11. Glossary

The NRC is revising the following definitions in Section 7.0, Glossary: actual consequences, apparent violation, lost source policy, substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20, and traditional enforcement. The NRC is also adding definitions for certificate holders and nonlicensees for purposes of the Policy.

12. Table of Base Civil Penalties

In Section 8.0, Table of Base Civil Penalties, Table A, the NRC is revising the title of Category "c" by replacing the wording "Fuel fabricators authorized to possess Category III

quantities of SNM [special nuclear material]...” with the wording “All other fuel fabricators, including facilities under construction...” This change will ensure that Table A addresses fuel facilities under construction.

IV. Procedural Requirements

Paperwork Reduction Act Statement

This Policy statement does not contain new or amended information collection requirements 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.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Congressional Review Act

In accordance with the Congressional Review Act, 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.

Dated at Rockville, MD, this xxth day of (month), 2012.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook
Secretary of the Commission