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NUCLEAR REGULATORY COMMISSION  
DEC 5 9 32

10 CFR Part 2

Policy and Procedures for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: Modification.

SUMMARY: The NRC is publishing a modification to its Enforcement Policy to add an additional civil penalty adjustment factor for violations involving maintenance deficiencies. This policy is codified as Appendix C to 10 CFR Part 2.

EFFECTIVE DATE: December 8, 1989. However, it will only be applied for violations which occur after March 8, 1990. Comments submitted within 60 days of publication of this modification will be considered.

ADDRESS: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm, weekdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street N.W., Lower Level, Washington, D.C.

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FOR FURTHER INFORMATION CONTACT: James Lieberman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Telephone (301) 492-0741.

SUPPLEMENTARY INFORMATION: On March 23, 1988, the Commission issued a Policy Statement on Maintenance of Nuclear Power Plants (53 FR 9430) which stated the Commission's expectations in the area of maintenance and its intention to proceed with a rulemaking on maintenance. Subsequently, on November 28, 1988, the Commission published a Notice of Proposed Rulemaking (53 FR 47822) directed toward improving the effectiveness of maintenance programs. The Commission recognizes that the industry and individual licensees have made improvements in their maintenance programs. Indeed, the Commission has seen noticeable progress by the industry over the past four years in the area of nuclear power plant maintenance. The Commission also recognizes that the industry is committed to continue to improve maintenance. Nevertheless, NRC maintenance team inspections have confirmed that further improvements are necessary, especially with regard to effective implementation of maintenance programs. In view of the progress made to date, as well as the industry's expressed commitment to continue to improve maintenance, the Commission has decided to hold rulemaking in abeyance for a period of 18 months from the effective date of the Revised Policy Statement on Maintenance of Nuclear Power Plants which was published elsewhere in this issue. The Commission will assess the need for

rulemaking at the conclusion of this 18 month period, based upon industry initiatives and progress in improving maintenance.

The Commission believes that a strong maintenance program can make a significant contribution to safety. In the Revised Policy Statement on the Maintenance of Nuclear Power Plants, the Commission stated its intention to emphasize maintenance in enforcing existing requirements for power reactors. Consistent with that position, the Enforcement Policy is being revised to provide such emphasis by adding maintenance failures as an escalating factor in assessing civil penalties where it has been concluded that the violation involves a significant regulatory concern. The Commission acknowledges that inclusion of the root cause of a violation as an escalation factor when considering a civil penalty is a change from past practice. Further, the Commission recognizes that consideration of only one root cause (maintenance) as a specific escalating factor focuses on only a fraction of the possible casual factors that may be involved in a particular violation.

By this change, the Commission is not establishing a new group of civil penalty actions. Consistent with current practice, a violation will be considered for escalated action (Severity Level I, II, or III violations) based on the violation, including its impact, circumstances, and root causes. Special escalation will only apply if the violation or problem area (aggregated violations) has a maintenance root cause.

The Commission concludes that modifying the Enforcement Policy to permit increased civil penalties for Severity Level I, II, or III violations which occur 90 days or later after the date of this notice and which result from maintenance deficiencies may provide a further incentive to ensure that all licensees place appropriate attention on maintenance of equipment whose failure could significantly impact safety. Use of the Commission's enforcement program in this manner to emphasize the importance of meeting existing requirements related to maintenance is warranted because of the varying quality of licensee maintenance programs, including implementation, and the decision to hold in abeyance the rulemaking on maintenance. By this revision to the Enforcement Policy, the Commission is putting licensees on notice that the decision to defer a maintenance rule does not mean the Commission does not expect a serious licensee effort in the maintenance area. It is expected that the revision to the Enforcement Policy will remain effective at least until the Commission reconsiders the need for rulemaking in the maintenance area.

Since this action concerns a general statement of policy, no prior notice is required and, hence, this modification to the Enforcement Policy is effective upon issuance. However, the modification for maintenance will only be applied for violations which occur 90 days or later after the date of publication.

List of Subjects in 10 CFR Part 2.

Part 2 - Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Civil penalty, Enforcement, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Violations, and Waste treatment and disposal.

PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS.

1. The authority citation for Part 2 continues to read in part as follows:

AUTHORITY: SEC. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. Appendix C. Section V.B is amended by adding Section V.B.7 directly after paragraph 3 of section V.B.6 to read as follows:

Appendix C - General Statement of Policy and Procedure for NRC Enforcement Actions

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V. Enforcement Actions. \* \* \*

B. Civil Penalty. \* \* \*

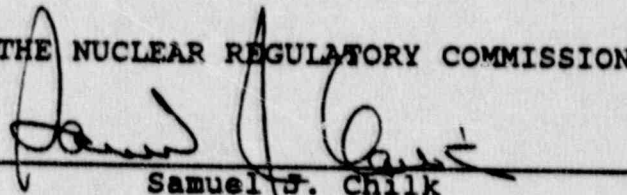
7. Maintenance-Related Cause.

The base civil penalty may be increased as much as 50% for cases where a cause of a maintenance-related violation at a power reactor is a programmatic failure. For the purposes of application of this factor, a cause of the violation shall be considered to be maintenance-related if the violation could have been prevented by implementing a maintenance program consistent with the scope and activities defined by the Revised Policy Statement on the Maintenance of Nuclear Power Plants. In assessing this factor, consideration will be given to, among other things, whether a failure to perform maintenance or improperly performed maintenance was a programmatic failure. The degree of the programmatic failure will be considered in applying this factor.

\* \* \* \* \*

Dated at Rockville, Maryland, this 5<sup>th</sup> day of  
December, 1989.

FOR THE NUCLEAR REGULATORY COMMISSION



Samuel S. Chilk  
Secretary of the Commission