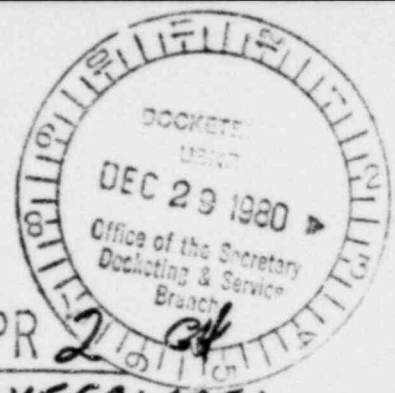


# ACNP



DOCKET NUMBER  
PROPOSED RULE **PR 2**  
**45 FR 66754**

December 23, 1980

Secretary of the Commission  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
ATTN: Docketing and Servicing Branch

RE: Proposed General Statement of Policy and Procedure for  
Enforcement Actions (45FR 66754)

The American College of Nuclear Physicians presented testimony  
at the Chicago public hearing 2 December 1980. The enclosed  
comments support and expand the comments presented.

Codification of the Commission's enforcement policy is commen-  
dable. Offering a proposed Policy for Public Comment is even  
more commendable. Unfortunately, the "Proposed Policy" is  
being utilized during the comment period - this arouses specu-  
lation that the comment process is more window dressing than  
real and one suspects that Commission opinion is more set than  
open to change. True use of the industrial, academic and other  
affected communities during the formative stage of proposed  
policy making is strongly urged to the Commission.

Paragraphs IV, D., (2) and (3) include points which have been  
very troublesome in past experiences with Commission licenses  
and inspections. The tenor of these proposals indicates a  
continuing indeed probably an escalating problem. A "recommended"  
or "encouraged" action is not a requirement. The Commission  
should never inspect a licensee for accomplishment of recommended  
or encouraged actions but only for mandatory actions. When  
alternative solutions to problems exist inspectors must be  
knowledgeable enough to assess the approaches and must not be so  
rigid that they accept only one approach. Experience has indi-  
cated that both license reviewers and inspectors read Commission  
recommendations and encouragements as requirements. A licensee  
should not be obliged to follow "...a type of activity that a  
class of licensees has been encouraged to follow." The Commission  
must clearly delineate the difference between encouraged and  
obligatory measures, between requirements and suggestions and  
must adhere to the difference as well as expecting the licensee  
to do so. We believe this problem will be magnified by the  
current proposals.

Comments on specific violations include:

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Acknowledged by card

12/29/80

Supplement I, Severity I. Category 1 and 2 violations seem considerably less dangerous than 3 and 4.

Supplement IV, Severity II. This area seems to effectively establish exposure limits less than currently imposed by established standards. This is not the place or mechanism to establish new limits. Exposures slightly in excess of these limits would provide only slight risks and the penalties are in excess of the violation. Extensive revision of this area is recommended. The use of this proposal to impose a new limit is severely questioned.

Supplement IV, Severity III, violation number 4 seems of lesser magnitude than the others in this section. The adequacy of a survey is very subjective decision. Many potential violations would revolve around honest differences of opinion between the licensee and inspector. Downgrading at least to severity 4 is recommended.

Supplement V, Severity I and II violations in general seem very harsh in comparison to the magnitude of the violation. Downgrading of at least one step in most instances is recommended.

It is not quite clear where medical licensees fit in the Supplements as listed. We assume any violation by a medical licensee would fall under supplement IV but that is not clearly delineated.

Answers to the specific questions listed in 45FR 69077 are:

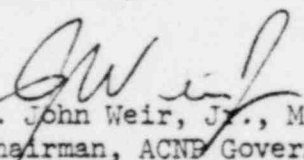
- 1) "Is the policy fair and equitable?" As stated, yes. In practice this will depend on even application by inspectors. The inherent vagueness of certain violations (Supplement IV, Severity III, number 4) will make this impossible to achieve unless vagueness is reduced to eliminate opinion. This is possible only if violations and citations are limited to mandatory actions. An inspector could operate as a teacher in areas of encouraged actions but must not assess violations in such areas.
- 2) "Is the policy understandable?" No. Inspection and citations based on "guides", "encouraged actions" and "recommendations" will never really be understood.
- 3) "Are the Severity Levels appropriate?" For medical licensees they are too severe. Severity level I should not apply to medical licensees except if life is threatened. Each of the violations listed should be downgraded 1 or 2 levels. Other specific comments are listed above.
- 4) "Are the different types of activities well enough defined? Should there be others?" Actions by medical and biological research licensees should be separated from Health Physics actions of reactor licenses. The potential hazard is considerably different.
- 5) "Are the distinctions among various types of licensees shown in Table 1 appropriate?" Yes.
- 6) "Are the factors for determining the level of enforcement actions appropriate? Should there be others?" Specific comments are listed.

- 7) "Is the degree of discretion allowed to Office Directors appropriate? Should there be more flexibility permitted? Less?" More flexibility is recommended. The range of potential accidental over exposures is far greater than the categories listed.
- 8) "Are the levels of civil penalties that require Commission involvement appropriate? Should they be higher? Lower?" Appropriate.
- 9) "Are the provisions of escalated action, set forth in Table 2, appropriate?" These provisions may be too harsh for minor repetitious violations. Great flexibility in application is needed.

Part of the stimulus to the proposed Policy is the occurrence of violations of current requirements. These violations should be handled by correction to and penalties upon those who cause them. Those who have previously complied with requirements should not be penalized because of those who did not. These proposals bring new requirements, additional paperwork and heavier fines for first violations to those who have complied with all requirements to date. The proposals should be changed to clearly apply only to the habitual and flagrant violators the Commission seems to imply exist.

In closing, the College again wishes to stress its belief that consultation between the Commission, the College and other groups representing licensees would be more effective at a far earlier stage. When Commission activities have progressed to "proposed" policies and actions much energy and thought has already gone into the proposal. Reactions should be sought long before this stage, thus preventing hard feelings and relaxing the adversarial posture of the Commission with professional and trade organizations.

Sincerely,

  
G. John Weir, Jr., M.D.  
Chairman, ACNE Government Affairs Committee

GJW: vjd