



OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

IN RESPONSE, PLEASE
REFER TO: M871202

acs

December 9, 1987

MEMORANDUM FOR: Victor Stello, Jr.
Executive Director for Operations

William C. Parler, General Counsel

FROM: *Baker* Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION
AND VOTE, 3:30 P.M., WEDNESDAY, DECEMBER 2,
1987, COMMISSIONERS' CONFERENCE ROOM, D.C.
OFFICE (OPEN TO PUBLIC ATTENDANCE)

I. SECY-87-261 - Final Rule Regarding Completeness and
Accuracy of Licensee Communication with the NRC

The Commission, by a 5-0* vote, approved publication of amendments to Appendix C of 10 CFR Part 2 and Parts 30, 40, 50, 55, 60, 61, 70, 71, 71, 110, and 150 as modified on the attached pages. The amendments codify the obligations of licensees and applicants for licenses to provide the Commission with complete and accurate information, to maintain accurate records and to provide for disclosure of information identified by licensees as significant for licensed activities. Commissioner Bernthal also provided additional views to be published with the FRN.

The FRN should be revised as noted and forwarded for signature and publication in the Federal Register.

(EDO)

(SECY Suspense: 12/21/87)

* Section 201 of the Energy Reorganization Act, 42 U.S.C §5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Roberts was not present when this item was affirmed. Accordingly, the formal vote of the Commission was 4-0 in favor of the decision. Commissioner Roberts, however, had previously indicated that he would approve this paper and had he been present he would have affirmed his prior vote.

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II. SECY-87-280 - Implementation of the Freedom of Information Reform Act of 1986; Final Rule Amending 10 CFR Part 9, Subpart A, and Minor Conforming Amendments to 10 CFR Part 2 and Part 9, Subparts B, C, and D

The Commission, by a 5-0* vote, approved amendments to 10 CFR Parts 2 and 9 in order to conform NRC's Freedom of Information Act (FOIA) regulations to the FOIA as amended in 1986, current NRC organizational structure, and current agency practice and delegation.

The FRN should be forwarded for signature and publication in the Federal Register.

(EDO)

(SECY Suspense: 12/21/87)

III. SECY-87-281 - Procedures to Follow Licensing Board Decision on Disposal of Accident-Generated Water at TMI-2

The Commission, by a 5-0** vote, approved an order which specifies the procedures the Commission will implement in carrying out its May 1, 1981, commitment to approve any plans for disposal of accident-generated water at Three Mile Island Unit 2.

(Subsequently, on December 3, 1987, the Secretary signed the Order.)

Attachments:

As stated

cc: Chairman Zech
Commissioner Roberts
Commissioner Bernthal
Commissioner Carr
Commissioner Rogers
GPA
PDR - Advance
DCS - 016 Phillips

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COMMISSIONER CARR'S COMMENTS ON SECY 87-261

I approve the proposed final rule subject to indicated changes on certain pages of the rulemaking notice that are attached to this vote sheet:

1. I agree with the Chairman's proposed modifications to eliminate the use of the term "flagrant". I have indicated additional places (pages 14 and 34) in the notice where that term should also be eliminated.

2. I have proposed revised wording in response to the comment on the use of the term "careless disregard". Although the term has come to mean "willful" at least in a civil context, it is a less than perfect description. I don't believe that the Commission really disagrees with the commenter that "careless disregard" should be used to connote reckless or wanton behavior, particularly when describing circumstances in which the term "material false statement" may be applied. Thus, I suggest the following revision on page 14 to make the point clear:

"The concept of 'careless disregard' goes beyond simple negligence, as the term has been applied in judicial decisions defining willful conduct and as it has been applied by this agency. See, e.g., *Trans World Airlines, Inc. v. Thurston*, 83 L.Ed.2d 523, 537 (1985); *Reich Geo-Physical, Inc.*, ALJ-85-1, 22 NRC 941, 962-63 (1985). 'Careless disregard' connotes a reckless regard or callous indifference toward one's responsibilities or the consequences of one's actions, and in that sense it appropriately describes circumstances in which the Commission may apply the term 'material false statement'."

3. Section 107 of the Atomic Energy Act pertaining to operators' licenses should be referenced on page 17 of the notice, because this rule is modifying the provisions of Part 55.

4. The version of Supplement VII of the enforcement policy in the notice uses outdated versions of our guidance on discrimination and harassment violations and should be corrected to reflect the changes published in 52 Fed. Reg. 36215, 36227 (Sept. 28, 1987).

① 11-30-87

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 50, 55, 60, 61, 70, 71, 72, 110 and 150

Completeness and Accuracy of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule and statement of policy.

SUMMARY: The NRC is amending its regulations to codify the obligations of licensees and applicants for licenses to provide the Commission with complete and accurate information, to maintain accurate records and to provide for disclosure of information identified by licensees as significant for licensed activities. This action ^{re-emphasizes} ~~is necessary because~~ the NRC ^{is need to} ~~must~~ receive complete, accurate, and timely communications from its licensees and license applicants if the NRC is to fulfill its statutory responsibilities. In addition, the Commission is revising its Enforcement Policy to reflect the ^{new} ~~amended~~ rule.

EFFECTIVE DATE: (Insert date to be effective 30 days after publication.)

FOR FURTHER INFORMATION CONTACT: Mary E. Wagner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 492-8659.

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 1987, the Nuclear Regulatory Commission published in the Federal Register (52 FR 7432) a proposed rule to codify an applicant's and

[As written, this sentence suggests we need the rule or we will not receive accurate info - an indefensible position]

licensee's obligation to ensure the completeness and accuracy of its communications with the Commission, to maintain accurate records and to report to the NRC information identified by the applicant or licensee as having a significant implication for the public health and safety or common defense and security.

As discussed in the statement of considerations that accompanied the proposed rule, accuracy and forthrightness in communications to the NRC by licensees and applicants for licenses are essential if the NRC is to fulfill its responsibilities to ensure that utilization of radioactive material ^{and the operation of nuclear facilities} is consistent with the health and safety of the public and the common defense and security. Several provisions of the Atomic Energy Act highlight the importance of accurate information. Section 186 provides that:

Any license may be revoked for any material false statement in the application or any statement of fact required under section 182

Section 182 provides that:

The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for and statements made in connection with, licenses under sections 103 and 104 shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

This need for accuracy in communications has been emphasized through the adoption in licensing provisions, although not on a uniform basis, of requirements regarding the submission of applications. See, e.g., 10 CFR 50.30(b), 55.10(d), 61.20(a), 70.22(e) and 72.11(b).

X

The Commission's expectation of accuracy in communications has not been limited to written information submitted in applications. The Commission's decision in a 1976 enforcement action taken against a utility established a comprehensive requirement for applicants and licensees to provide complete and accurate information to the Commission. In that case, false statements were alleged to have been made in the utility's submissions to the Commission on the geology of the plant site. Omissions of information by the utility were also evaluated: two were failures to present evidence at the Licensing Board construction permit hearings about suspected faulting and the third omission was the utility's failure to provide the Board or staff with reports prepared by its geology consultant. In its decision, the Commission concluded "that the material false statement phrase in the Atomic Energy Act may appropriately be read to require full disclosure of material data".

Virginia Electric & Power Company (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976), aff'd, 571 F.2d 1289 (4th Cir. 1978). The Commission decided materiality is to be judged by whether information has a natural tendency or capability to influence an agency decisionmaker; that knowledge of the falsity of a material statement is not necessary for a material false statement under section 186 and that material omissions are actionable to the same extent as affirmative material false statements. X

Under this standard, both the ^{inaccurate} written statements and ^{the} omissions made by the utility ^{in that case} were subject to civil penalties. In subsequent years, the Commission took a number of enforcement actions for material false statements. These enforcement actions included the following factual situations: omission of information about receipt of draft reports during oral statements made in X

46 witnesses drawn from NRC staff, licensees, industry groups and law/consulting groups gave testimony to the Committee, many ^{of whom commented} ~~commenting~~ on the material false statement policy. The Committee's conclusions and recommendations are summarized in the March 11, 1987 Federal Register notice *proposing this rule.* X

II. Analysis of Public Comments

In response to the March 11, 1987 Federal Register notice, the Commission received comments from 23 organizations and individuals, including utilities, law firms, citizens' organizations, a medical physicist, a commercial testing laboratory, and ^{other} members of the public. Copies of the comments may be examined in the Commission's Public Document Room at 1717 H Street, NW, Washington, DC. The comments, summarized and responded to below, have been categorized under the following topics: (1) licensee notification of significant information; (2) legal issues; (3) material false statements; and (4) completeness of information. X

Licensee Notification of Significant Information

Many commenters opposed the adoption of paragraph (b) of the regulation, in its entirety. A variety of reasons were given as to why paragraph (b) should not be adopted.

Comment: Several commenters expressed the view that the reporting requirements of paragraph (b) are vague and difficult to implement; what is

"significant" is not defined, and cautious licensees will flood the Commission with information.

Response: The Commission believes that the requirements of proposed paragraph (b) are sufficiently clear that licensees will be able to determine when reporting is required. The standard for reporting is not so broad that licensees should have difficulty recognizing it. For example, the rule does not require licensees to predict what the NRC will likely deem to be "material" information, an arguably vague standard; rather, the standard is one of a licensee's own recognition of information with significant health or safety or common defense or security implications. This is a standard that the Commission should reasonably expect licensees to ~~recognize~~ *understand and apply*. Moreover, the notice of proposed rulemaking gives guidance, in the form of examples, as to what could indicate recognition by licensees of the significance of the information. As noted in VEPCO, no specific set of regulations can be expected to cover all possible circumstances; within this constraint, the Commission believes the requirements of paragraph (b) are clearly set forth.

Comment: One commenter expressed the view that the provision that the requirement is "not applicable to information . . . required to be provided . . . by other requirements" could be interpreted to mean that paragraph (b) does not apply to power reactors.

Response: The provision that the rule is "not applicable to information . . . required to be provided . . . by other requirements" is intended to make clear that the rule requires the reporting of residual information not covered by one of the specific reporting requirements, and is not intended to exempt power reactor licensees from the provision.

are objective indicia of recognition that can be used by the NRC in determining whether a licensee in fact recognizes the significance of the information in question. The Commission believes that the rule as drafted, requiring reporting of significant information only when licensee recognizes it as such, offers more guidance to a licensee than a formulation which would require a licensee to try to predict what the Commission will deem to be material, and is sufficiently specific to discourage attempts to evade the rule.

Legal Issues

Comment: One commenter questioned the Commission's legal authority to impose an "additional recordkeeping requirement" and a "new notification requirement", arguing that section 182 of the Atomic Energy Act does not authorize the imposition of a generic recordkeeping requirement or generic notification requirement.

X Response: The Commission has extensive statutory authority in addition to section 182 to require licensees and applicants to report complete information and to maintain accurate records. That authority is derived from the licensing provisions in the Atomic Energy Act ~~along with~~ ^{and} the rulemaking authority of section 1610 of the Atomic Energy Act, which permit the imposition of reporting requirements and recordkeeping requirements. Neither Paragraph (a) of the new rule, which codifies an applicant's and a licensee's obligation to ensure the accuracy of its communications with the Commission, nor paragraph (b), which codifies in modified form the "full disclosure"

aspects of the VEPCO decision, creates any new obligations for licensees and applicants. X

Comment: It was also argued that section 186 of the Atomic Energy Act permits revocation of a license only for a material false statement in connection with a license application or with statements provided in response to a request under section 182.

Response: The commenter's conclusion is based on his reading sections 182 and 186 of the Atomic Energy Act to say that a material false statement can exist only when the statement in question is contained in an application or sought by the NRC under section 182 of the Act. The commenter is both misreading section 186 and misconstruing the basis of authority for the new rule. One can make the argument that a literal reading of the Atomic Energy Act requires a false statement to be in an application or a response sought by the NRC under section 182. However, the court in VEPCO held that the Commission's expanded interpretation of section 186 permitted the term "material false statements" to encompass omissions as well as affirmative statements. Moreover, the Commission's long standing practice since the VEPCO decision has been consistent with the VEPCO interpretation to reach statements and omissions not contained in an application or section 182 response. X

More importantly, the new rule does not utilize the term "material false statement" and is not based solely on sections 186 and 182. Rather, the rule is also based on the licensing provisions of the Act and section 161. It is inconceivable that Congress would have established the broad regulatory authority in the Atomic Energy Act, which is considered unique, Siegel v. X

X AEC, 400 F.2d 778, 783 (D.C. Cir. 1968), and not granted sufficient authority for the Commission to require communications, regardless of the format, to be complete and accurate. The public health and safety and common defense and security require no less. Under the new regulations, civil penalties would be authorized under section 234 because the regulations are issued under the enumerated licensing provisions in section 234(a)(1). In addition, a violation of these regulations would constitute a violation for which a license could be revoked under section 186. Under section 186, a license can be revoked for failure to meet a regulation, including the communication regulation. Finally, the Act permits a license to be revoked because of conditions which would warrant refusing to grant a license on an original application. Clearly, the Commission would not have issued a license to persons who were not committed to providing complete and accurate information in all of their communications to the Commission.

Material False Statements

Most commenters endorsed, as a positive proposal, the Commission's decision to exercise its discretion in the application of the term "material false statement" to miscommunications and limiting the use of the term to situations where there is an element of intent. They expressed the view that careful use of the label "material false statement" should assure that any adverse connotation associated with its use is justified.

Comment: A few commenters opposed narrowing the application of the term "material false statement". In their view, retention of the material false

statement language (and its negative connotations) for a broad range of communication errors would provide more incentive for licensees to report information in a timely and complete fashion.

Response: As many commenters have pointed out, a charge of material false statement is equated by most people with lying and an intention to mislead. Because of this connotation, the Commission believes the charge should be reserved for ^{such} ~~significant~~ communication failures. [per LZ]

Under prior policy, a material false statement could be either an affirmative statement, oral or written, or an omission, and could be unintended and inadvertent as well as intentional. The Commission believes that application of the term material false statement to all of these situations is not as effective in improving accuracy and completeness of information as the reservation of this label as an additional enforcement tool in egregious situations. The rule will minimize the potential of persons not providing information because of a fear of being labeled as a submitter of a material false statement.

Comment: One commenter criticized the rule for not containing a definition of material false statement.

Response: The Commission has decided to exercise its discretion in the application of the term material false statement by limiting the use of the term to situations where there is an element of intent. As emphasized in the statement of considerations accompanying both the proposed rule and this final rule, the Commission is reserving the use of this label as an additional enforcement tool in egregious situations, which will be determined on a case-by-case basis. With the adoption of this rule, the Commission will have

the mechanism to apply the full range of enforcement sanctions to inaccurate communications or records without reliance on the term material false statement. Thus, the label of material false statement is no longer significant from a legal perspective.

Moreover, the Department of Justice supports the Commission's decision not to define a material false statement, in view of the potential for confusion ^{between} ~~from~~ the Commission's use of the term material false statement in its civil context and criminal prosecutions for material false statements under 18 U.S.C. 1001.

Comment: One commenter objected to the use of the term "careless disregard" which is used in the statement of considerations accompanying the proposed rule to illustrate a situation where a material false statement label might be appropriate. To the commenter, the concept of "careless disregard" is appropriately used in the context of negligent behavior and not where there is an element of intent.

Response: ~~The Commission believes that a situation involving careless~~
~~disregard may in certain circumstances appropriately be labelled as a material~~
~~false statement. The concept of careless disregard goes beyond simple~~
~~negligence and can give rise to a flagrant communication failure within the~~
~~scope of the new policy.~~

Completeness of Information

Comment: One commenter thought that the requirement in paragraph (a) for "completeness of information", if interpreted in a strict sense, may

reviewer to seek additional information to clarify his or her understanding of the information already provided. This type of inquiry by the NRC does not necessarily mean that incomplete information which would violate this rule has been submitted.

Normally, an inadvertent error in an oral communication that is promptly corrected will not result in an enforcement action. Further guidance on oral communications is provided below in the discussion of Enforcement Policy associated with the rule.

Comment: One commenter noted that only a very small percentage of documents maintained by a licensee undergo the kind of scrutiny given to documents actually provided to the NRC as an affirmative representation of what it believes to be correct information on which the NRC should rely in licensing or regulating a plant. The commenter predicted a "compliance nightmare" if the standard of completeness were applied to all files generated for licensee's internal use, such as ^{quality assurance} (QA) files.

Response: It has always been implicit in the Commission's requirements that a licensee maintain certain records that those records accurately reflect the activities documented. An incomplete QA file is a violation of existing requirements. The explicit statement in paragraph (a) of the new rule of the standard of accuracy of records required by the NRC to be kept does not in any way change existing recordkeeping requirements or add to the kind or nature of records expected to be maintained.

III. The New Regulations

After careful consideration of all the comments received, the Commission has deleted proposed § 55.6b(b), which would impose a notification requirement, running directly to licensed operators and senior operators, for significant information, and otherwise adopted the amendments in the same form that they appeared in the March 11, 1987 Federal Register proposed rule.

The new regulations include identical provisions in Parts 30, 40, 50, 60, 61, 70, 71, 72, and 110 which contain two elements: (a) a general provision which codifies the current policy which requires that all information provided to the Commission by an applicant or licensee or required by the Commission to be maintained by the applicant or licensee shall be complete and accurate in all material respects; and (b) a reporting requirement to replace the full disclosure aspects of the current material false statement policy that would require applicants and licensees to report to the NRC information identified by the applicant or licensee as having a significant implication for the public health and safety or common defense and security. The amendment to Part 55 contains the first element only. Section 150.20 is being amended to provide that when an Agreement State licensee is operating within NRC's jurisdiction under the general license granted by § 150.20, the licensee is subject to the above requirements.

These regulations are being issued under the Commission's authority in sections 62, 53, 65, 81, 82, 103, 104, ¹⁰⁷161c, 161o, 182, and 274, as well as section 126, of the Atomic Energy Act of 1954, as amended. In addition,

[section 107 pertains to operator's licenses and is named section in 234. Since this rule affects Part 55, 107 should be referenced.]

X while section 186 can be read as addressing only material false statements made in certain contexts, the scope of the Commission's responsibilities under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as well as the Commission's decision in the VEPCO case and subsequent enforcement actions under that statement of the law, make it clear that the Commission has the inherent authority to require communications with the agency on regulatory matters to be complete and accurate regardless of their context. Under section 186 of the Atomic Energy Act, failure to observe any of the terms or provisions of any regulation of the Commission is an explicit basis for revocation of a license. Thus, with the adoption of these new regulations regarding accuracy in communications and records, a violation of paragraph (a) or (b) of the proposed rule may be grounds for revocation of a license as well as imposition of civil penalties under section 234 of the Atomic Energy Act.

X The final rule codifies in a uniform manner an applicant's and a licensee's obligation, as articulated in the VEPCO decision, to ensure the accuracy ~~and completeness~~ of its communications with the Commission. The provision does not create any new obligations for licensees and applicants; rather, it describes in a regulation rather than in an adjudicatory decision, the standard for accuracy and completeness to be adhered to when supplying information to the agency or when generating and maintaining records required to be kept by the Commission. The standard described in paragraph (a) of the proposed rule, "complete and accurate in all material respects," continues the degree of accuracy prescribed in the VEPCO decision; that is, any information provided to the Commission or maintained in

[These words did not appear in the original notice. Since the entire rule does not modify the VEPCO decision as to completeness in the context of the "pure omission" statement, it is not going to change.]

a regulation which states a generic requirement for accuracy in information made available to the agency, it is deemed desirable to explicitly refer to information kept in records pursuant to Commission requirements for inspection by the NRC, as well as information submitted to the NRC, since the standard for accuracy and completeness is the same for all information in whatever form it is made available to the Commission. This explicit statement of the standard of accuracy required for records does not in any way change existing recordkeeping requirements or add to the kind or nature of records expected to be maintained.

Like paragraph (a), paragraph (b) creates no new obligation to report information to the Commission. Rather, it merely codifies in a modified form the "full disclosure" aspects of licensees' and applicants' obligations established by the VEPCO decision. In that decision the Commission recognized its obligation "to promulgate regulations which provide clear, comprehensive guidance to applicants and licensees," VEPCO at 489, but went on to conclude that,

[T]he fact remains that no specific set of regulations, however carefully drawn, can be expected to cover all possible circumstances. Information may come from unexpected sources or take an unexpected form, but if it is material to the licensing decision and therefore to the public health and safety, it must be passed on to the Commission if we are to perform our task. . . .

A Since the initial description of the "full disclosure" requirement in VEPCO, however, reporting obligations for substantial additional categories of significant safety information have been affirmatively established, e.g., 10 CFR 21.21, and 10 CFR 50.72 and 50.73. Both material and reactor

This change recognizes the negative connotations which are associated by the public and the industry with the term material false statement but retains the use of this label as an additional enforcement tool in egregious situations, which will be determined on a case-by-case basis. The Commission expects to use the term rarely because with the adoption of this rule, the Commission will have the mechanism to apply the full range of enforcement sanctions to inaccurate communications or records without reliance on the term material false statement. Consequently, the Commission sees no need to develop a specific definition of the term "material false statement." ^{1/} The Department of Justice supports this approach in view of the potential for confusion from the Commission's use of the term material false statement in its civil context and criminal prosecutions for material false statements under 18 U.S.C. 1001. However, should a violation of the proposed requirement for complete and accurate information be labeled as a material false statement, it is expected

that the communication failure will ~~be flagrant, involving~~ ^{involve} [per LZ], for example, instances (1) where an inaccurate or incomplete written or sworn oral statement is made knowing the statement is inaccurate or incomplete, or with

stet. ~~careless~~ ^{careless} disregard for its accuracy or completeness; or (2) where an

^{1/} Any characterization or use which the Commission gives to the term material false statement as used in the Atomic Energy Act of 1954, as amended, is, of course, limited to the Commission's civil enforcement actions and has no legal impact on the meaning given to similar terms and phrases used in other statutes, e.g., 18 U.S.C. 1001, or on the authority of the Department of Justice to prosecute under such statutes. Thus, regardless of what enforcement action NRC may take for a communication failure, the failure may be subject to criminal sanctions.

inaccurate or Incomplete unsworn oral statement is made with a clearly demonstrable knowledge of its inaccuracy or incompleteness.

IV. Enforcement Policy

The Commission's existing material false statement policy is currently reflected in the General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C (Enforcement Policy). Modifications to this policy to reflect the new rules and the changes to Commission policy announced here are being published concurrently with these new rules.

A violation of the regulations on submitting complete and accurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement will be made on a case-by-case basis and will be reserved for ~~the most flagrant or~~ egregious violations. Prior consultation with the Commission will continue for those cases in which the staff recommends using the material false statement label. Violations involving inaccurate or incomplete information will be categorized based on the guidance in the Enforcement Policy, Section III (Severity of Violations), new Section VI (Inaccurate and Incomplete Information), and the revised Supplement VII. Consistent with the existing supplement, willful communications failures or communications failures regarding very significant information are categorized at a Severity Level I or II, and other significant communication failures normally will be categorized at a Severity Level III. Less significant failures

VI. Inaccurate and Incomplete Information

X A violation of the regulations on submitting complete and accurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement will be made on a case-by-case basis and will be reserved for ~~the most flagrant or~~ egregious violations. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a licensee normally will be categorized based on the guidance herein, in Section III "Severity of Violations", and in Supplement VII.

The Commission recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, the Commission must be able to rely on oral communications from licensee officials concerning significant information. A licensee official for purposes of application of the Enforcement Policy means a first line supervisor or above as well as a licensed individual, radiation safety officer, or a person listed on a license as an authorized user of licensed material. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to such factors as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience, (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information,

(3) the degree of intent or negligence, if any, involved, (4) the formality of the communication, (5) the reasonableness of NRC reliance on the information, (6) the importance of the information which was wrong or not provided, and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least ~~careless disregard~~ ^{stet.}, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or the NRC ^{before} ~~raising~~ ^{raised} a question about the information, no enforcement action will be

[This is an old use criteria published in policy, revised 52 FR 36227, 36215, 36228, 1987)
crit 4.

4. Action by senior corporate management in violation of section 210 of the ERA against an employee; or

5. A knowing and intentional failure to provide the notice required by Part 21.

B. Severity II - Violations involving for example:

1. Inaccurate or incomplete information which is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;
2. Incomplete or inaccurate information which the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

out of date
See 52 FR
36227.

4. Action by plant management above first-line supervision in violation of section 210 of the ERA against an employee, or

5. A failure to provide the notice required by Part 21.

C. Severity III - Violations involving for example:

1. Incomplete or inaccurate information which is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;
2. Incomplete or inaccurate information which the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when

reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. Failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;

*out of date
see 52
FR 36227.*

4. Action by first-line supervision in violation of section 210 of the ERA against an employee; or

5. Inadequate review or failure to review such that, if an appropriate review had been made as required, a Part 21 report would have been made.

D. Severity IV - Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance which is provided to the NRC but not amounting to a Severity Level I, II, or III violation;
2. Information which the NRC requires be kept by a licensee and which is incomplete or inaccurate and of more than minor

(2) require applicants and licensees to report to the NRC information identified by the applicant or licensee as having significant implications for the public health and safety or common defense and security.

(probably only licensees since we don't license initially the applicants)
The same provisions will apply to ~~applicants or~~ licensees in Agreement States--28 states which have assumed, by agreement, part of the NRC's regulatory authority--when ~~operating~~ *such licensees operate* under the NRC's jurisdiction.

Until now, the obligation of applicants and licensees to provide accurate information to the NRC was covered, though not on a uniform basis, in requirements governing the submission of applications *and reports* which are contained in various parts of the regulations. In addition, a 1976 Commission decision in an enforcement action taken against Virginia Electric and Power Company (VEPCO) established a comprehensive requirement for applicants and licensees to provide complete and accurate information to the Commission. However, under *the decision* ¹VEPCO, the term "material false statement" has been applied to both intentional and innocent communication errors.

Under the amendments, the Commission will have the mechanism available to apply the full range of enforcement sanctions to inaccurate communications or records without relying on the use of the term "material false statement". Accordingly, because of its negative connotations, the Commission will limit the use of that term to egregious