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DOCUMENT DATE: 06/30/1995

TITLE: PR-002 - 60FR3438 - POLICY AND PROCEDURE FOR
ENFORCEMENT ACTIONS; REMOVAL

CASE REFERENCE: PR-002
60FR3438

KEY WORD: RULEMAKING COMMENTS

Document Sensitivity: Non-sensitive - SUNSI Review Complete

DOCKET NO. PR-002
(60FR34380)

In the Matter of
POLICY AND PROCEDURE FOR ENFORCEMENT ACTIONS;
REMOVAL

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
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06/26/95	06/23/95	FEDERAL REGISTER NOTICE - PROPOSED RULE
07/21/95	07/11/95	COMMENT OF ROBERT BOYD (1)
08/17/95	08/15/95	COMMENT OF NUCLEAR ENERGY INSTITUTE (WILLIAM H. RASIN) (2)
03/25/96	03/22/96	FEDERAL REGISTER NOTICE - POLICY STATEMENT: CORRECTION

DOCKETED
USNRC'96 MAR 25 [7590-01-P]
P2:05

NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
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10 CFR Part 2

Policy and Procedure for Enforcement Actions;

Removal; Correction

DOCKET NUMBER
PROPOSED RULE **PR** 2
(60FR34380)

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Correction.

SUMMARY: This document corrects a notice appearing in the *Federal Register* on June 30, 1995 (60 FR 34380), that announced the removal of the Nuclear Regulatory Commission's (NRC's) Enforcement Policy from the Code of Federal Regulations. This action is necessary to correct an inadvertent indication in the Paperwork Reduction Act Statement section that the policy statement did not include any information collection requirements. Because this notice and a second notice announcing the revision of the NRC's Enforcement Policy (60 FR 34381; June 30, 1995) were subsequently issued in their entirety as NUREG-1600, NUREG-1600 also includes this inadvertent indication. An errata for NUREG-1600 is being issued to address this issue.


Pub. 3/28/96
(61FR13655)

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2741.

On page 34380, in the third full paragraph in the third column, the correct Paperwork Reduction Act Statement for the NRC's Enforcement Policy should read: "This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C."

Dated at Rockville, Maryland, this 22nd day of March 1996.

For the Nuclear Regulatory Commission.


John G. Hoyle,
Secretary of the Commission.



NUCLEAR ENERGY INSTITUTE

'95 AUG 17 A10:06

OFFICE OF SECRETARY
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William H. Rasin
SENIOR VICE PRESIDENT,
TECHNICAL/REGULATORY

August 15, 1995

Mr. John C. Hoyle
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

DOCKET NUMBER
PROPOSED RULE **PR** 2
(60FR 34380) (2)

ATTENTION: Docketing and Service Branch

SUBJECT: Policy and Procedure for Enforcement Actions; Removal
(60 Fed. Reg. 34380, June 30, 1995); and Revision of the NRC
Enforcement Policy (60 Fed. Reg. 34381, June 30, 1995)

Dear Mr. Hoyle:

On June 30, 1995, the U.S. Nuclear Regulatory Commission (NRC) published two notices in the *Federal Register* concerning the NRC Enforcement Policy. The first of the two notices announced the removal of the Policy and Procedure for Enforcement Actions (Enforcement Policy) from the Code of Federal Regulations, and the second notice was a revision to the Enforcement Policy. The Nuclear Energy Institute (NEI)¹, on behalf of the commercial nuclear energy industry, previously submitted comments on the Enforcement Policy (see letters to the NRC dated 10/24/94; 11/1/94; and 12/28/94) and also actively participated in public meetings with the NRC where we expressed our views on the Enforcement Policy.

We agree with the Commission's view that the Enforcement Policy should be treated as a policy statement and not as a regulation, and that removing it from 10 CFR helps to make that clear.

The NRC's review of the Enforcement Policy provided an opportunity for a comprehensive evaluation of the agency's approach to enforcement based upon the need to consider fundamental changes. We believe that several of the changes can

¹ The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

AUG 18 1995
Acknowledged by card

U.S. NUCLEAR REGULATORY COMMISSION
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Mr. John C. Hoyle
August 15, 1995
Page 2

significantly improve the NRC's enforcement program. While the industry has expressed serious concern about various aspects of the previous policy and its implementation, and we continue to have some concerns about the revised policy, we will be in a better position to judge the effectiveness of the new policy after the eighteen-month trial period.

We strongly encourage the Enforcement Policy be implemented in a manner consistent with its stated purpose and be clearly focused on matters related to safety. The significant improvement in industry safety performance and the continuing positive trend in overall plant performance should be reflected in fewer escalated enforcement actions.

We appreciate the opportunity to participate in your Enforcement Policy review process and look forward to commenting following the close of the trial period.

Sincerely,

A handwritten signature in dark ink, appearing to read "William H. Rasin", with a stylized flourish at the end.

William H. Rasin

WHR/ec



DOCKETED
USNRC

JUL 21 19:25

NUCLEAR REGULATORY COMMISSION

Office of Public Affairs
Washington, D.C. 20555

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

No. 95-82

Tel. 301/415-8200

DOCKET NUMBER
PROPOSED RULE **PR 2**

FOR IMMEDIATE RELEASE
(Wednesday, July 5, 1995)

(60FR34380) ①

NRC REVISES ENFORCEMENT POLICY AND REMOVES IT FROM CODE OF FEDERAL REGULATIONS

The Nuclear Regulatory Commission has revised, and is providing an opportunity for public comment on, its General Statement of Policy and Procedure for Enforcement Actions.

✓ The revisions result from a reassessment of the enforcement program, completed in April. The review team found that the enforcement program, at times, sent mixed regulatory messages to licensees, calling for revisions in existing enforcement policy.

The most significant revisions include:

- ✓ -- new emphasis on the importance of licensee self-identification of violations, and on current licensee performance;
- ✓ -- the direction of more NRC attention to licensees with a record of multiple significant violations over a relatively short time period;
- ✓ -- the use of enforcement actions only for violations of more than minor significance;
- ✓ -- continuation of a trial program of predecisional enforcement conferences open for public observation; and
- ✓ -- the use of discretion to assure that agency sanctions provide the appropriate regulatory message.

The Commission originally added the "General Statement of Policy and Procedure for Enforcement Actions" as Appendix C to Part 2 of its regulations in October 1980 to assure that it received widespread dissemination. However, because it is a policy statement and not a regulation, the Commission is removing it from the Code of Federal Regulations.

*This is a very good thing to do
in my opinion.*

Acknowledged by card.....**AUG 1 8 1995**.....

[Signature]
7/11/95

However, to ensure that the enforcement policy will continue to receive widespread dissemination, in addition to being published in the Federal Register on June 30, it is being made available in a document identified as NUREG-1600 and copies can be purchased from the Government Printing Office, P. O. Box 37082, Washington, D. C. 20402-9328.

Written comments on the revised enforcement policy should be received by August 14 and should be addressed to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Service Branch.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

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10-63-64570-000

SECRETARY OF THE COMMISSION
NUCLEAR REGULATORY COMMISSION
WASHINGTON D.C.

20555

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PROPOSED RULE **PR 2**
(60FR 34380)

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[7590-0148] NRC

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

'95 JUN 26 P4:19

Policy and Procedure for Enforcement Actions; Removal

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is removing its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) from the Code of Federal Regulations.

DATES: This action is effective on [insert date of publication in the Federal Register].

Submit comments on or before (45 days after publication in the Federal Register). 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: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

Pub.
6/30/95

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301)-415-2741.

SUPPLEMENTARY INFORMATION:

On May 13, 1994, the NRC's Executive Director for Operations established a review team to assess the NRC enforcement program. The review team report, NUREG-1525¹, "Assessment of the NRC Enforcement Program," was published in April 1995. The team report, in Recommendation II. G-3, recommended that the Enforcement Policy be removed from the Code of Federal Regulations (CFR) because the Enforcement Policy is not a regulation.

The NRC Enforcement Policy has been codified at 10 CFR Part 2, Appendix C to provide widespread dissemination of the Commission's Enforcement Policy. However, after the Commission first published the Enforcement Policy on October 7, 1980 (45 FR 66754), the Commission has maintained that the NRC Enforcement Policy is a policy statement and not a regulation. The Commission's reason for having a policy statement rather than a rule was explained in the Statement of Considerations that accompanied the publication of the 1982 Enforcement Policy. The Commission stated then:

¹ Copies of NUREG-1525 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

An underlying basis of this policy that is reflected throughout it is that the determination of the appropriate sanction requires the exercise of discretion such that each enforcement action is tailored to the particular factual situation. In view of the discretion provided, the enforcement policy is being adopted as a statement of general policy rather than as a regulation, notwithstanding that the statement has been promulgated with notice and comment procedures. A general statement of policy will permit the Commission maximum flexibility in revising the policy statement and it is expected that the statement, especially the supplement, will be revised as necessary to reflect changes in policy and direction of the Commission (47 FR 9989; March 9, 1992).

For the same reasons, the Commission continues to hold the view that the Enforcement Policy is a policy statement. However, at least one court, in considering whether an enforcement policy was a policy statement or a regulation, noted that if the policy were published in the CFR, it would be properly treated as a regulation because the CFR is reserved for documents "having general applicability and legal effect." (*Brock v. Cathedral Bluffs Shale Oil Co.*, 796 F.2d 533, 539 (D.C. Cir. 1986) citing 44 U.S.C. 1510 (1982)).

Therefore, because the Enforcement Policy is not a regulation, the Commission is removing it from the Code of Federal Regulations. Revisions of the Enforcement Policy will continue to be published in the Federal Register.

To ensure widespread dissemination, the Enforcement Policy will be provided to licensees, made available on an electronic bulletin board, and published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions."

Paperwork Reduction Act Statement

This policy statement contains no information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in Part 2

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

PART 2 -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

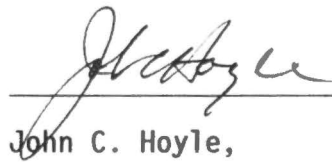
1. The authority citation for Part 2 continues to read, in part, as follows:

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841)* * *.

Appendix C to Part 2 [Removed]

2. Appendix C to Part 2 is removed.

Dated at Rockville, MD, this 23rd day of June, 1995.
For The Nuclear Regulatory Commission.



John C. Hoyle,

Secretary of the Commission.