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ENFORCEMENT ACTIONS; DELIBERATE MISCONDUCT
RULE

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STATUS OF RULEMAKING

PROPOSED RULE: PR-MISC OPEN ITEM (Y/N) N

RULE NAME: POLICY AND PROCEDURE FOR ENFORCEMENT ACTIONS;
 DELIBERATE MISCONDUCT RULE

PROPOSED RULE FED REG CITE: 63FR01982

PROPOSED RULE PUBLICATION DATE: 01/13/98 NUMBER OF COMMENTS: 0

ORIGINAL DATE FOR COMMENTS: / / EXTENSION DATE: / /

FINAL RULE FED. REG. CITE: 63FR01982 FINAL RULE PUBLICATION DATE: 01/13/98

NOTES ON: AMENDING POLICY STATEMENT TO CONFORM TO MODIFICATIONS TO THE DELIB
 STATUS : ERATE MISCONDUCT RULE. FINAL RULE ISSUED (SEE PR-030, 032... AT
 OF RULE : 63FR01890, PUB. 1/13/98. FILE ON P1.

HISTORY OF THE RULE

PART AFFECTED: PR-MISC

RULE TITLE: POLICY AND PROCEDURE FOR ENFORCEMENT ACTIONS;
 DELIBERATE MISCONDUCT RULE

PROPOSED RULE	PROPOSED RULE	DATE PROPOSED RULE
SECY PAPER:	SRM DATE: / /	SIGNED BY SECRETARY: / /
FINAL RULE	FINAL RULE	DATE FINAL RULE
SECY PAPER: 97-252	SRM DATE: 12/12/97	SIGNED BY SECRETARY: 01/06/98

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DOCKET NO. PR-MISC
(63FR01982)

In the Matter of
POLICY AND PROCEDURE FOR ENFORCEMENT ACTIONS;
DELIBERATE MISCONDUCT RULE

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
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01/12/98	01/06/98	FEDERAL REGISTER NOTICE: POLICY STATEMENT: AMENDMENT
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DOCKET NUMBER
PROPOSED RULE **PR** *MISC*
(62 FR 1982)

DOCKETED
USNRC
[7590-01-P]

NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Policy and Procedure for Enforcement Actions; Deliberate Misconduct Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Amendment

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions" to conform to modifications to the Deliberate Misconduct Rule. These modifications extend that Rule to applicants for NRC licenses, applicants for, and holders of, certificates of compliance, early site permits, standard design certifications, or combined licenses issued under Part 52, applicants for or holders of certificates of registration, quality assurance approvals, and the employees, contractors, subcontractors, and consultants of those persons. By a separate action published in this issue of the Federal Register, the Commission has issued a final rule amending 10 CFR Parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150.

February 12, 1998

EFFECTIVE DATE: This action is effective on ~~[30 days after publication in the Federal Register]~~.

Pub. on 1/13/98

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

SUPPLEMENTARY INFORMATION:

The Commission's "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy or Policy) was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. On June 30, 1995 (60 FR 34381), the Enforcement Policy was revised in its entirety and was also published as NUREG-1600. The Policy primarily addresses violations by licensees and certain non-licensed persons, as discussed further in footnote 3 to Section I, Introduction and Purpose, and in Section X: Enforcement Action Against Non-licensees.

The Deliberate Misconduct Rule was adopted in September 1991 and applies to any licensee or any employee of a licensee; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee. The Deliberate Misconduct Rule placed licensed and unlicensed persons on notice that they may be subject to enforcement action for deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any of the Commission's requirements, or for deliberately providing to the NRC, a licensee, or contractor, information that is incomplete or inaccurate in some respect material to the NRC.

The final rulemaking expands the Deliberate Misconduct Rule, where it appears in 10 CFR Parts 30, 40, 50, 60, 61, 70, 72, and 110, clarifies the scope of Part 32 and adds the Rule to Parts 52 and 71. This expansion arises out of a realization that the current Rule does not apply to applicants for NRC licenses, applicants for, or holders of, certificates of compliance, early site permits, standard design certifications, or combined licenses issued under Part 52, applicants for or holders of certificates of registration, quality assurance program approvals and the employees, contractors, subcontractors, and consultants of those persons. The Commission believes that it is equally important for these categories of persons to be subject to enforcement action for deliberate wrongdoing, such as the submission of inaccurate or incomplete information.

The Commission is making this change to the General Statement of Policy and Procedure for NRC Enforcement Actions to make it consistent with the regulations. The changes include: (1) expansion of footnote 3 in Section I, which discusses the scope of the Policy; (2) deletion of the reference to vendors in Section VI.C.5, to avoid possible confusion as a result of a partial listing of those to whom the Rule and Policy apply; and (3) restating the opening sentence in Section VI.C.5 and in Section X: Enforcement Actions Against Non-licensees, to set out the full scope of the Rule and its application through the Enforcement Policy.

The Commission has held that the term "contractor" includes a vendor or supplier that manufactures and offers for sale materials intended for use by NRC licensees and certified to meet the requirements of 10 CFR Part 50, Appendix B. In the Matter of: *Five Star Products, Inc. and Construction Products Research, Inc.*, 38 NRC 169, CLI-93-23 (October 21, 1993). In light of that holding, the remaining references to vendors throughout the Enforcement Policy are

also being modified to refer to contractors as the inclusive term. These changes are being made in Sections V, VI.B.1, VI.C, VI.D, VIII, X, Table 1A, and Supplements I.C. and VII.C.

Paperwork Reduction Act

This policy statement does not contain a new or amended information collection requirement 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, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 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, Office of Management and Budget.

Accordingly, Sections I, V, VI B., C., and D., VIII, X, and Supplements I and VII of the NRC Enforcement Policy are amended to read as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

I. INTRODUCTION AND PURPOSE

The purpose of the NRC enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. Consistent with that purpose, enforcement action should be used:

- As a deterrent to emphasize the importance of compliance with requirements, and
- To encourage prompt identification and prompt, comprehensive correction of violations.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees, contractors,² and their employees, who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects.³ Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of these policies and procedures. In

² The term "contractor" as used in this policy includes vendors who supply products or services to be used in an NRC-licensed facility or activity.

³ This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. Therefore, the term "licensee" is used throughout the policy. However, in those cases where the NRC determines that it is appropriate to take enforcement action against a non-licensee or individual, the guidance in this policy will be used, as applicable. These non-licensees include contractors and subcontractors, holders of, or applicants for, NRC approvals, e.g., certificates of compliance, early site permits, or standard design certificates and the employees of these non-licensees. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

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V. PREDECISIONAL ENFORCEMENT CONFERENCES

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a contractor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, contractor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective actions taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

* * * * *

During the predecisional enforcement conference, the licensee, contractor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence.

Licensees, contractors, or other persons will be told when a meeting is a predecisional enforcement conference.

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VI. ENFORCEMENT ACTIONS

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VI. B. 1. Base Civil Penalty

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, contractors, and other persons. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability

to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider as necessary an increase or decrease on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

* * * * *

TABLE 1A—BASE CIVIL PENALTIES

	*	*	*	*	*
c.	Test reactors, mills and uranium conversion facilities, contractors, waste disposal licensees, and industrial radiographers.....				\$11,000
	*	*	*	*	*

C. Orders

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5. Orders to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, or applicants for any of them, and to employees of any of the foregoing, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that

person involved in licensed activities.

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D. Related Administrative Actions

In addition to the formal enforcement actions, Notices of Violation, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and contractors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. Notices of Nonconformance are written notices describing contractors' failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices of Nonconformances request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

3. Confirmatory Action Letters are letters confirming a licensee's or contractor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

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VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

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Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement

action may be taken directly against the individual. However, violations involving willful conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.
- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Dereliction of duty.
- Falsifying records required by NRC regulations or by the facility license.
- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.
- Submitting false information and as a result gaining unescorted access to a nuclear power plant.
- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR Part 50, Appendix B, or other regulatory requirement.
- Willfully providing false certification that components meet the requirements of their

intended use, such as ASME Code.

- Willfully supplying, by contractors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.

* * * * *

X. ENFORCEMENT ACTION AGAINST NON-LICENSEES

The Commission's enforcement policy is also applicable to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, quality assurance program approvals, or applicants for any of them, and to employees of any of the foregoing, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or knowing submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Contractors who supply products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with licensees, suppliers may be required to have quality assurance programs that meet applicable requirements, e.g., 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Contractors supplying certain products or services to licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that contractors have failed to fulfill contractual commitments (e.g., 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their contractors have programs that meet applicable requirements. Notices of Violation will be issued for contractors who violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a contractor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for contractors who fail to meet commitments related to NRC activities.

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SUPPLEMENT I—REACTOR OPERATIONS

C.6. A licensee failure to conduct adequate oversight of contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

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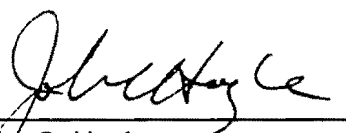
SUPPLEMENT VII—MISCELLANEOUS MATTERS

C.8. A failure to assure, as required, that contractors have an effective fitness-for-duty program;

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Dated at Rockville, Maryland, this 6th day of January, 1998.

For The Nuclear Regulatory Commission.



John C. Hoyle,
Secretary of the Commission.