

October 27, 1997

SECY-97-252

FOR: The Commissioners

FROM: L. Joseph Callan, Executive Director for Operations /s/

SUBJECT: FINAL RULE - DELIBERATE MISCONDUCT BY UNLICENSED PERSONS

PURPOSE:

To obtain Commission approval for publication of final amendments to 10 CFR Parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110 and 150 dealing with deliberate misconduct of unlicensed persons.

BACKGROUND:

In SECY-96-017, dated January 26, 1996, the NRC staff informed the Commission of its plans to extend the Deliberate Misconduct Rule to certificate holders, and to applicants for licenses or certificates of compliance. The Commission, in an SRM dated February 8, 1996, advised the Executive Director for Operations (EDO) that it approved SECY-96-017 and had no objections to the proposed changes to the Deliberate Misconduct Rule found at 10 CFR 30.10, 40.10, 50.5, 60.11, 61.9b, 70.10, 72.12, and 110.7b. In developing this rulemaking, the staff extended the scope of the Deliberate Misconduct Rule to also cover applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants issued under 10 CFR Part 52; applicants for, or holders of, certificates of registration issued under Parts 30 and 32; and applicants for, or holders of, quality assurance program approvals issued under Part 71 (including contractors, subcontractors and consultants of the above categories and

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employees of each of them). In addition, the scope of 10 CFR 150.2 is being changed to provide similar notice to persons conducting activities under reciprocity in areas of NRC jurisdiction.

The proposed rule was submitted to the Commission for approval (SECY-96-184, dated August 20, 1996) and published in the Federal Register on October 4, 1996 (61 FR 51835). The comment period ended on December 18, 1996. The Commission received 6 comments on the proposed rule. The Nuclear Energy Institute opposed issuance of the rule for allegedly being in excess of statutory authority. Other commenters generally supported the rule, but suggested limited changes.

A summary of the comments and NRC's responses are provided in the Statement of Consideration for Final Rule (Enclosure 1).

DISCUSSION:

As a result of the staff's review of the public comments, no changes were made to the final rule. Thus, the final rule revises the regulations to extend the scope of the Deliberate Misconduct Rule to six categories of persons. They are: (1) applicants for NRC licenses, under 10 CFR Parts 30, 40, 50, 60, 61, 70 and 110; (2) applicants for, or holders of, certificates of compliance issued under 10 CFR Parts 71 and 72; (3) applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants issued under 10 CFR Part 52; (4) applicants for, or holders of, certificates of registration issued under 10 CFR Parts 30 and 32; (5) applicants for, or holders of, quality assurance program approvals issued under 10 CFR Part 71; and (6) the employees, contractors, subcontractors and consultants of the first five categories of persons, so that they may be subject to enforcement action. In addition, the scope of 10 CFR 150.2 is being changed to provide similar notice to persons conducting activities under reciprocity in areas of NRC jurisdiction. These persons will include applicants for a license or certificate or quality assurance program approval and holders of a certificate or quality assurance program approval.

The staff does not believe that it is necessary to add the Deliberate Misconduct Rule to 10 CFR Part 54 because licensees applying to renew their operating licenses for nuclear power plants are already subject to this rule as licensees under 10 CFR Part 50. Similarly, the staff does not believe that it is necessary to add the Deliberate Misconduct Rule to 10 CFR Part 55 because applicants for, and holders of, reactor operators' licenses are already subject to this rule as employees of 10 CFR Part 50 licensees. Moreover, licensed operators are subject to all applicable Commission requirements (see 10 CFR 55.53 (d)) and thus a finding of deliberate misconduct is not required to take enforcement action against a licensed reactor operator.

As a result of adoption of this final rule, the NRC's Enforcement Policy needs to be amended. The proposed revisions are described in the enclosed Federal Register notice (Enclosure 2). The revision would be effective concurrently with these amendments to the regulations. They will also be reflected in the next revision to NUREG-1600, "General Statement of Policy and

Procedures for NRC Enforcement Action." As these amendments address the terminology used in referring to various unlicensed entities, e.g., contractors, vendors, it is appropriate to modify all existing references to vendors to conform to the Commission's holding in Five Star Products, Inc. and Construction Products Research, Inc., 38 NRC 169, CLI-93-23, that the term "contractor" includes vendor. These changes are reflected in the Federal Register notice. During the final stage of this rulemaking, it was recognized that the Deliberate Misconduct Rule, by its terms, does not expressly cover persons who conduct activities that require an NRC license but do not hold a license, i.e., using material without a license. The staff is of the view that the Rule covers those persons.

COORDINATION:

The Office of the General Counsel has no legal objection to this Final Rule. The Office of the Chief Information Officer has reviewed this Commission Paper for information technology and information management implications and concurs in it. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource impacts and has no objections.

RECOMMENDATION:

That the Commission:

1. Approve publication in the Federal Register of the notices of the attached Final Rulemaking (Enclosure 1) and revision to the NRC Enforcement Policy (Enclosure 2).
2. In order to satisfy the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This certification is included in the enclosed Federal Register notice.
3. Note:
 - a. The Regulatory Analysis has been included in the Federal Register notice.
 - b. The appropriate Congressional committees will be informed (Enclosure 3).
 - c. A public announcement will be issued by the Office of Public Affairs when the final rulemaking is filed with the Office of the Federal Register (Enclosure 4).
 - d. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons, as required by the Regulatory Flexibility Act.

- e. The final rule does not contain any new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.).

- f. The staff has determined that this is not a “major” rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2), and has confirmed this determination with the Office of Management and Budget. The appropriate Congressional and GAO contacts will be informed (Enclosure 5).

L. Joseph Callan
Executive Director
for Operations

Enclosures: As stated (5)

- f. The staff has determined that this is not a “major” rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2), and has confirmed this determination is with the Office of Management and Budget. The appropriate Congressional and GAO contacts will be informed (Enclosure 5).

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Enclosures: As stated (5)

RECORD NOTE: A copy of the final rule was sent to OIG for information on: August 14, 1997.

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ENCLOSURE 1

FEDERAL REGISTER NOTICE

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150

RIN: 3150-AF35

Deliberate Misconduct by Unlicensed Persons

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to extend the Deliberate Misconduct Rule to six categories of persons: applicants for NRC licenses; applicants for, or holders of, certificates of compliance; applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants; applicants for, or holders of, certificates of registration; applicants for, or holders of, quality assurance program approvals; and the employees, contractors, subcontractors and consultants of the above five categories of persons. This amendment would subject these categories of persons to enforcement action for deliberate misconduct. Deliberate misconduct may involve providing information that is known to be incomplete or inaccurate in some respect material to the NRC, or it may involve conduct that causes or would have caused, if not detected, a licensee, certificate holder, or applicant to be in violation of any of the Commission's requirements.

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EFFECTIVE DATE: This final rule is effective on (insert 30 days from date of publication in the Federal Register)

FOR FURTHER INFORMATION CONTACT: Tony DiPalo, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6191, e-mail, ajd@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1991 (56 FR 40664), the Commission adopted changes to NRC regulations that established the Deliberate Misconduct Rule found at 10 CFR 30.10, 40.10, 50.5, 60.11, 61.9b, 70.10, 72.12, and 110.7b, which 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. In addition, 10 CFR 150.2, Scope, provides notice to persons conducting activities under reciprocity in areas of NRC jurisdiction that they are subject to the rule (see 10 CFR 150.20, Recognition of Agreement State licenses). 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.

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Currently, the Deliberate Misconduct Rule does not apply to:

(1) Applicants for NRC licenses;

(2) Applicants for, or holders of, certificates of compliance issued under 10 CFR Parts 71 and 72, including those for dry cask storage;

(3) Applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants issued under 10 CFR Part 52;

(4) Applicants for, or holders of, certificates of registration issued under Parts 30 and 32;

(5) Applicants for, or holders of, quality assurance program approvals issued under Part 71; and

(6) The employees, contractors, subcontractors and consultants of the first five categories of persons.

To ensure that these persons are subject to enforcement action for wrongdoing under the Deliberate Misconduct Rule, on October 4, 1996 the NRC issued a proposed rule to extend the rule to them (61 FR 51835). This final rule will also add the Deliberate Misconduct Rule to 10 CFR Parts 52 and 71 where it currently does not appear.

The staff does not believe that it is necessary to add the Deliberate Misconduct Rule to 10 CFR Part 54 because licensees applying to renew their operating licenses for nuclear power plants are already subject to this rule as licensees under 10 CFR Part 50. Similarly, the staff does not believe that it is necessary to add the Deliberate Misconduct Rule to 10 CFR Part 55 because applicants for, and holders of, reactor operators' licenses are already subject to this rule as employees of 10 CFR Part 50 licensees. Moreover, licensed operators are subject to all applicable Commission requirements (see 10 CFR 55.53 (d)) and thus a finding of deliberate misconduct is not required to take enforcement action against a licensed reactor operator.

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Discussion

It is important that all information provided to the NRC be complete and accurate in all material respects. Section 186 of the Atomic Energy Act of 1954, as amended (AEA), underscores this need by providing that "[a] license may be revoked for any material false statement in the application or any statement of fact required [by statute or regulation]

. . . " The Commission has promulgated rules concerning completeness and accuracy of information that specifically apply to information provided to the Commission by a licensee or an applicant for a license (see 10 CFR 30.9(a), 40.9(a), 50.9(a), 60.10(a), 61.9a(a), 70.9(a), 71.az, 72.11(a), 76.9(a) and 110.7a(a)). Similarly, subsection (b) of each of these sections, which deals with notification to the Commission of significant safety information, refers to applicants as well as licensees. Violation of these provisions can result in denial of the license application, civil enforcement action against a licensee, or, if appropriate, referral to the Department of Justice for consideration for criminal prosecution.

The Deliberate Misconduct Rule permits the NRC to take individual action, such as issuing an order, against an individual who deliberately provides information that the individual knows to be incomplete or inaccurate. However, when the Deliberate Misconduct Rule was promulgated, it did not address applicants for licenses; applicants for, and holders of, certificates of compliance or certificates of registration; applicants for, and holders of, early site permits, certified designs and combined licenses; and applicants for, and holders of, quality assurance program approvals, and their employees, and contractors and consultants, and their employees.

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Incomplete or inaccurate information has potential safety significance, whether submitted before or after a license, certificate, permit, or approval has been issued. The Commission has clearly emphasized the importance of applications containing accurate information; e.g., "[The Commission] cannot overstate the importance of a licensee's or an applicant's duty to provide the Commission with accurate information." Randall C. Orem, D.O., CLI-93-14, 37 NRC 423 (1993). The Orem case involved a consultant to an applicant for a license who provided inaccurate information that was included in the license application and the Commission found that information as to the status of the facility was material to the licensing decision. Id. at 428.

The Commission believes that there may be significant safety consequences from the deliberate submission of false or incomplete information or other deliberate wrongdoing by an applicant for a license or other unlicensed persons covered by this modification to the Deliberate Misconduct Rule. For example, a quality assurance program that is submitted to the NRC for approval but is supported by deliberately falsified data that mask a significant defect could be a public health and safety threat. Under the present Deliberate Misconduct Rule, a certificate holder who obtained a certificate by deliberate submittal of false information could escape individual NRC enforcement action because the deliberate misconduct may not have put an "NRC licensee" in violation. To effectively exercise its authority under the AEA, the Commission needs to prevent or otherwise deter the deliberate submittal of materially false or inaccurate information by those entities not currently covered by the rule.

The Commission is amending the Deliberate Misconduct Rule each place it appears in 10 CFR Chapter I to make the rule apply to applicants for NRC licenses; to applicants for, and holders of, certificates of compliance issued under 10 CFR Parts 71 and 72; to applicants for, and holders of, early site permits, certified designs, and combined licenses for nuclear power plants issued under 10 CFR Part 52; to applicants for, and

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holders of, certificates of registration issued under Parts 30 and 32; and to applicants for, and holders of, quality assurance program approvals issued under Part 71; and to the employees, contractors, subcontractors and consultants of all the above categories of persons. This would include, for example, a consultant engaged by an applicant to prepare a license application for such activities as radiography, well logging, irradiation, and teletherapy. It would also apply to a consultant preparing an application for a certificate for a spent fuel cask, or individuals conducting performance tests to support such an application. The amendments to the Deliberate Misconduct Rule will appear in 10 CFR 30.10, 40.10, 50.5, 60.11, 61.9b, 70.10, 72.12, and 110.7b. Section 71.11 is being added to incorporate the rule in 10 CFR Part 71 and 10 CFR 52.10 is being added to incorporate the rule in 10 CFR Part 52. In addition, 10 CFR 150.2 and 10 CFR 32.1(b) are being revised to incorporate the proposed changes. Also, the scope provisions found in 10 CFR 30.1, 40.2, 50.1, 52.1, 60.1, 61.1(c), 70.2, 71.0, 72.2, and 110.1(a) are being modified to reflect these revisions to the rule. The Commission is also making a minor language change to improve readability by altering the phrase "but for detection" to "if not detected" where the phrase appears in each rule, but intends no substantive change by this revision. Having this enforcement authority available will help the NRC pursue redress in cases of deliberate misconduct by unlicensed persons acting within the scope of the Commission's jurisdiction and may deter such behavior as well.

This rulemaking extending the Deliberate Misconduct Rule to applicants for NRC licenses; applicants for, and holders of, certificates of compliance issued under 10 CFR Parts 71 and 72; applicants for, and holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants issued under 10 CFR Part 52; applicants for, and holders of, certificates of registration issued under Parts 30 and 32; and applicants for, and holders of, quality assurance program approvals issued under Part 71; and to the employees,

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contractors, subcontractors and consultants of all the above categories of persons, implements the Commission's authority under the AEA to issue regulations and orders to any person (defined in Section 11s of the AEA to include, e.g., an individual, corporation, firm, or a Federal, State, or local agency) who engages in conduct affecting activities within the Commission's subject matter jurisdiction.

In brief, Section 161i of the AEA provides broad authority to issue regulations and orders as the Commission deems necessary to govern any activity authorized pursuant to the AEA in order to protect public health and safety. Section 161b of the AEA similarly authorizes the Commission to issue regulations and orders to impose "standards and instructions" on persons to govern the possession and use of special nuclear material, source material, and byproduct material, as may be necessary or desirable to provide for the common defense and security and protect public health and safety. Section 234 of the AEA authorizes the NRC to impose civil penalties on certain unlicensed persons for violating the NRC's substantive requirements. Section 234a of the AEA reads as follows:

Any person who (1) violates any licensing or certification provision of Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or certification issued thereunder, or (2) commits any violation for which a license may be revoked under Section 186, shall be subject to a civil penalty,

The licensing provisions listed in Section 234a generally prohibit the possession, use, receipt, or transfer of nuclear materials or facilities unless authorized by and in accordance with a license.

The amendments are made under the authority of sections 161b and i and the above-identified licensing provisions in Section 234. The changes apply to any person in the categories enumerated above who engages in deliberate misconduct, or who deliberately submits materially incomplete or inaccurate information, as provided

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in the rule. By imposing a direct prohibition on unlicensed persons, the Commission may be able to exercise its Section 234 authority to impose civil penalties on unlicensed persons when they deliberately cause violations of requirements issued under the licensing provisions enumerated in Section 234. In cases when the Commission issues an order (other than an order imposing a civil penalty) to a person based on deliberate misconduct, the order would be issued in part pursuant to a regulation (e.g., 10 CFR 30.10) that was promulgated under a licensing provision of the AEA. A civil penalty could be available for violations of such an order. In addition, criminal sanctions under Section 223 of the AEA are available for willful violations of orders and regulations issued under sections 161b and i. Injunctions are also available under Section 232 of the AEA for violations of Commission orders.

Summary of Public Comments

On December 18, 1996, the comment period for the proposed amendments to the Deliberate Misconduct Rule closed. The NRC received 6 comments on the proposed rule which are addressed below. One comment, in addition to favoring speedy adoption of the proposed rule, requested information on the status of NRC enforcement cases against certain dry cask storage vendors which the NRC views to be outside the scope of this proposed rulemaking. Copies of the public comments are available in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. A summary of the comments is provided below.

Comment: One utility commenter was concerned that the proposed revisions to the rule did not address preliminary or "for information only" information that may be sent to the NRC staff. This commenter believed

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that situations could arise where licensees provide information to the NRC staff to support teleconferences or meetings and where the information is considered to be preliminary and subject to change over time. In these cases, the commenter believed preliminary information should not be construed as intended to be complete and the conclusion reached that deliberate misconduct occurred. A second issue raised by this commenter pertained to how potentially erroneous information in a Safety Evaluation Report could result in a conclusion reached by the NRC staff that since this erroneous information is inconsistent with that provided in the licensee's submittal, the licensee committed willful misconduct.

Response: The NRC's completeness and accuracy rules require that all information provided to the Commission shall be complete and accurate in all material respects (10 CFR 30.9, 40.9, 50.9, etc.). The deliberate submission of information which is incomplete or inaccurate in material respects, where the submitter of the information knows of the incompleteness or inaccuracy, may be considered deliberate misconduct. However, the submission of information acknowledged to be incomplete would not be considered deliberate misconduct if it is made in good faith and based on the best information available, but is corrected later based on additional information or analysis. The NRC's General Statement of Policy and Procedures for Enforcement Actions (NUREG-1600) (Enforcement Policy) points out that a citation is not made if an initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advances in technology. Also, the Commission recognizes that oral information may in some situations be less reliable. This is addressed in Section IX of the Enforcement Policy.

Finally, the Commission does not take lightly its responsibility in this area and carefully considers each action involving an individual. As the Commission stated in the original Deliberate Misconduct Rule:

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"It would be an erroneous reading of the final rule on deliberate misconduct to conclude that conscientious people may be subject to personal liability for mistakes. The Commission realizes that people may make mistakes while acting in good faith. Enforcement actions directly against individuals are not to be used for activities caused by merely negligent conduct. These persons should have no fear of individual liability under this regulation, as the rule requires that there be deliberate misconduct before the rule's sanctions may be imposed. The Commission recognizes, ... that enforcement actions involving individuals are significant actions that need to be closely controlled and judiciously applied." (See 56 FR 40664, 40681)

Comment: One commenter, the Nuclear Energy Institute (NEI), believes that the NRC is exceeding its statutory authority under the Atomic Energy Act of 1954 (the AEA) in promulgating these amendments to the Deliberate Misconduct Rule because, in the view of NEI, authority over non-licensee persons was not provided by Congress other than in limited circumstances carved out in the AEA as exceptions. In particular, NEI believes that Section 161i(3) of the AEA does not provide jurisdiction over non-licensee persons because it does not contain the operative phrase "any person" and therefore, NEI implies, is confined to licensees. NEI recognizes that deliberately-provided misinformation or other deliberate misconduct could have a very serious effect on public health and safety and thus needs to be deterred. However, in the view of NEI, 18 U.S.C. § 1001, the general criminal statute applicable to the Federal government and its agencies, provides an adequate deterrent to the wrongdoers NRC seeks to capture in this rulemaking.

Response: The Commission considered, but rejected, the objection that it did not have jurisdiction over non-licensees at the time it issued the original Deliberate Misconduct Rule. See 56 FR 40664, (1991). As the Commission stated:

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In enacting Section 161 of the 1954 Act, Congress conferred uniquely broad and flexible authority on the Commission. Specifically, Congress authorized the Commission in Section 161 to 'prescribe such * * * regulations * * * as it may deem necessary to govern any activity authorized pursuant to [the 1954 Act], in order to protect health and minimize danger to life and property.'

With respect to the absence of specific provisions setting forth the limits of the NRC's personal jurisdiction, the Commission stated at 56 FR 40666 - 40667:

Where Congress does not include statutory provisions governing in personam jurisdiction, it is appropriate to look to the scope of subject matter jurisdiction in order to determine the scope of in personam jurisdiction. Since Congress did not include any specific personal jurisdiction provisions in the 1954 Act, or any limitations on such jurisdiction, the NRC is authorized to assert its personal jurisdiction over persons based on the maximum limits of its subject matter jurisdiction. The agency's personal jurisdiction is established when a person acts within the agency's subject matter jurisdiction. * * The persons who are being brought within the scope of the Deliberate Misconduct Rule in these amendments are all persons who, in some way, engage in activities within NRC's subject matter jurisdiction. Thus, the Commission discerns no statutory prohibition on making these persons subject to the restrictions of the Deliberate Misconduct Rule.

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NEI also contends that the Deliberate Misconduct Rule and these amendments are not needed because an adequate deterrent and remedy is provided by 18 U.S.C. § 1001. This statute allows the imposition of criminal penalties for persons who, inter alia, knowingly and willfully make false statements to an agency of the Federal Government. There are several reasons why this enforcement option is not an adequate substitute for the Deliberate Misconduct Rule. First, 18 U.S.C. § 1001 punishes deliberate false statements but does not cover the types of deliberate misconduct captured by Section a(1) of the rule. Second, the civil enforcement penalties available to the NRC for violations of its rule, precisely because they are less drastic than criminal penalties, are more flexible and, thus, are more likely to be used in appropriate cases, affording the NRC greater ability to deter and remedy deliberate misconduct.

Comment: NEI also commented that one of the rule's standards for enforcement action -- knowingly providing incomplete or inaccurate information which is "in some respect material to the NRC" -- is overly broad. This standard appears to permit the NRC to take enforcement action whether or not a violation of NRC regulations has occurred or would have occurred but for detection. This breadth of scope results in the standard not being sufficiently clear to inform the public of the elements of the prohibited action.

Response: The Commission disagrees with the commenter's assertion that the rule is overly broad. The rule specifies that the persons who are delineated as being subject to the rule must knowingly provide components, materials or other goods and services that relate to, e.g., a licensee's or certificate holder's activities subject to NRC regulation. Such persons, therefore, know that they are acting in an area that relates to activities within NRC's regulatory jurisdiction. As the Commission said with respect to a similar comment objecting to the original Deliberate Misconduct Rule, "a person with the requisite knowledge who deliberately provides false

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or inaccurate information that is material to the NRC presents a health and safety concern within the NRC's regulatory sphere." 56 FR 40670. The fact that no actual violation has occurred, or would have occurred but for detection, has no bearing on whether, from a health and safety standpoint, that person should be involved in nuclear activities. Although, the commenter is correct that the standard permits the NRC to take enforcement action whether or not a violation has occurred, or would have occurred but for detection, the Commission does not believe that this fact renders the standard overly broad.

Comment: One commenter, the JAI Corporation, proposed that the scope of the proposed rule be broadened to include persons submitting information pursuant to the notification requirements of 10 CFR Part 21. The commenter, apparently believing that such persons are not presently covered by the Deliberate Misconduct Rule, pointed to the unfairness that would exist if persons who knowingly submit incomplete or inaccurate information to licensees are penalized but persons who knowingly submit incomplete or inaccurate information to the NRC regarding defects or non-compliance under Part 21 are not penalized.

Response: Under 10 CFR Part 21, certain types of persons, e.g., individual directors or responsible officers of a corporation, must notify the NRC when they obtain certain types of information; e.g., information concerning defects in components which could cause a substantial safety hazard. When such persons provide information to the NRC they are subject to the Deliberate Misconduct Rule as it appears in the relevant Part of Chapter I of 10 CFR. For example, if the director of a corporation obtains information indicating a failure to comply or a defect affecting a basic component that is supplied for a nuclear power plant subject to 10 CFR Part 50, the director is subject to the Deliberate Misconduct Rule as it appears in Part 50 (10 CFR 50.5) when reporting this failure to comply or defect to the NRC. Further, the Deliberate Misconduct Rule makes no

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distinction between deliberately submitting information known to be incomplete or inaccurate to the NRC and submitting the same information to a licensee, or to a licensee's contractor or subcontractor. Thus, the regulations do not countenance the disparity of treatment envisioned by the commenter.

Comment: One commenter, a source production and equipment company, supported the proposed rule but also recommended that the rule be revised to specifically apply to the persons who maintain the equipment malfunction records that are required by the Quality Control and Quality Assurance (QA/QC) programs which are required under 10 CFR Part 32 for the manufacture and distribution of radiography equipment. The commenter recognizes that because these records are not part of the Quality Assurance program itself, they are not submitted to the NRC as part of a registration certificate application. Nevertheless, the commenter believes that the accuracy and integrity of these records are essential for the QA/QC program to be effective and thus the Deliberate Misconduct Rule should apply to persons who maintain equipment malfunction records for certificate holders.

Response: The Deliberate Misconduct Rule is being made applicable to certificate holders and applicants, and to their employees, contractors and subcontractors, not only when they deliberately submit information to the NRC, but also when they deliberately submit to a certificate of registration holder or applicant, or a certificate holder's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. Thus, for example, an employee or contractor of a certificate of registration holder responsible for maintaining equipment malfunction records who knowingly submits incomplete or inaccurate information to the certificate of registration holder violates the Deliberate Misconduct Rule if the information submitted is in some respect

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material to the NRC. However, in the absence of a requirement for maintenance of equipment malfunction records, a person generating an inaccurate or incomplete equipment malfunction record is not subject to the Deliberate Misconduct Rule unless and until these records are actually submitted to one of the persons covered by section a(2) of the rule.

Comment: One commenter, while agreeing with the proposed rule, did not see why amendment of the Deliberate Misconduct Rule is necessary with respect to Part 72 certificate holders and their contractors and subcontractors because, in the view of the commenter, the rule presently encompasses the contractors and subcontractors of licensees and certificate holders are contractors to licensees and thus are covered by the rule as it now exists.

Response: Insofar as certificate holders are contractors to licensees (and certificate holders' contractors and subcontractors are subcontractors to licensees), the commenter is correct. Those certificate holders, and their contractors and subcontractors, are covered by the present rule. However, the NRC does not require the existence of a contract as a prerequisite to the issuance of a Certificate of Compliance (see 72.236; 72.238). Thus, it is possible for a certificate holder not to be a contractor to a licensee. The amended rule will cover those certificate holders.

Criminal Penalties

The Commissioners

For purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule under one or more of sections 161b, 161i or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule relates to enforcement matters and, therefore, falls within the scope of 10 CFR 51.10(d). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule 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 numbers 3150-0017, 3150-0151, 3150-0127, 3150-0135, 3150-0009, 3150-0132, 3150-0036, and 3150-0032.

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.

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Compatibility of Agreement State Regulations

The Commission did not make the original Deliberate Misconduct Rule and the supporting enforcement guidance a matter of Agreement State compatibility. However, in the intervening period, the Commission has re-examined its compatibility policy and issued two new policy statements which establish principles for determining the degree of compatibility expected between NRC and Agreement State regulations: "Statement of Principles and Policy for the Agreement State Program," and "Policy Statement on Adequacy and Compatibility of Agreement State Programs," (62 FR 46517). The NRC staff, in conjunction with the Joint NRC-Agreement State Adequacy and Compatibility Working Group, re-evaluated the compatibility categorization of 10 CFR 30.10, 40.10 and 70.10 and recommended that these deliberate misconduct requirements be required for compatibility under Category C of the new Policy Statement. Under Category C, Agreement States would have to adopt the essential objectives of these requirements to avoid conflicts, duplications or gaps between the NRC and Agreement State Programs. The Commission has approved staff's plan to provide an opportunity for the Agreement States and the public to comment on this and other recommendations. After receipt and resolution of comments, the staff will submit final recommendations to the Commission for approval.

Regulatory Analysis

The Nuclear Regulatory Commission has statutory authority to issue enforcement actions against unlicensed persons whose deliberate misconduct causes a licensee or a certificate holder or an applicant for a

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license or certificate to be in violation of the Commission's requirements. On August 15, 1991 (56 FR 40664), the NRC promulgated the Deliberate Misconduct Rule which put licensed and unlicensed persons on notice that they may be subject to enforcement action for deliberate misconduct that causes or, if not detected, would cause a licensee to be in violation of any of the Commission's requirements or for deliberately providing to the NRC, a licensee or a contractor information that is incomplete or inaccurate in some respect material to the NRC.

However, the Deliberate Misconduct Rule does not specifically apply to: (1) applicants for NRC licenses, (2) applicants for, and holders of, certificates of compliance issued under Parts 71 and 72, (3) applicants for, and holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants issued under Part 52, (4) applicants for, and holders of, certificates of registration issued under Parts 30 and 32, (5) applicants for, and holders of, quality assurance program approvals issued under Part 71, and (6) the employees, contractors, subcontractors and consultants of the first five categories of persons.

On November 29, 1991, the NRC staff issued an Order Revoking License to Dr. Randall C. Orem after the NRC staff learned that information in his license application was false and that the application had been prepared by a consultant who had provided the false information. See Randall C. Orem, D.O., CLI-93-14, 37 NRC 423 (1993). In this case, the NRC staff realized that under the provisions of the existing Deliberate Misconduct Rule, it was unable to take additional enforcement action against Dr. Orem and was precluded from taking enforcement action against the consultant because the consultant was working for an applicant rather than for a licensee. Subsequently, the Commission realized that other categories of persons within the Commission's jurisdiction had not been explicitly included within the Deliberate Misconduct Rule; e.g., certificate holders under 10 CFR Parts 71 and 72 and holders of early site permits, certified design certifications and combined licenses under 10 CFR Part 52.

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The Commission believes that there may be significant safety consequences from the deliberate submission of false or incomplete information or other deliberate wrongdoing by an applicant for a license or other unlicensed persons proposed to be covered by this modification to the Deliberate Misconduct Rule. For example, a spent fuel storage cask that is certified by the NRC on the basis of falsified test data could represent a threat to public health and safety. Similarly, a quality assurance program that is submitted to the NRC for approval, but is supported by deliberately falsified data that mask a significant defect, could also be a public health and safety threat. Because the potential for injury is serious, the NRC knows no reason why the Deliberate Misconduct Rule should not apply to persons who deliberately submit materially incomplete or inaccurate information, whether that submittal is by or on behalf of an applicant, or by or on behalf of a holder of a license, certificate, permit or approval.

The objective of the rule is to explicitly put those persons encompassed by this modification of the Deliberate Misconduct Rule on notice that enforcement action may be taken against them for deliberate misconduct or deliberate submission of incomplete or inaccurate information, in relation to NRC licensed activities. Under Section 234 of the Atomic Energy Act, the Commission may impose civil penalties on any person who violates any rule, regulation, or order issued under any one of the enumerated provisions of the Act, or who commits a violation for which a license may be revoked. The enforcement actions that may be taken, including orders limiting activities of wrongdoers in the future and civil penalties, will serve as a deterrent to others throughout the industry.

The alternatives available to the Commission are to promulgate a modification of the Deliberate Misconduct Rule, as is proposed herein, or do nothing. Given the fact that a case has already occurred where the Commission was precluded from taking appropriate enforcement action against a consultant to an applicant,

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and the potential harm to the public, the alternative of doing nothing was rejected. The benefits of taking enforcement action are similar to those of taking action against licensed entities in that a civil penalty and attendant adverse publicity encourage future compliance, the Notice of Violation calls for a precise response as to corrective action taken, and an enforcement order, if obeyed, will directly control the involvement of an individual in a licensed activity. The effect of having these options available in the enforcement program should reduce the probability of repetitive violations by wrongdoers.

The NRC does not anticipate that additional investigations will be necessary to implement the rule because it focuses on the results of investigations. Based on experience, the NRC expects fewer than 10 additional cases per year to result in enforcement action being taken against unlicensed individuals. The cost of preparing and publishing the additional actions beyond the current workload is not significant.

The rule constitutes the preferred course of action and the cost involved in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The final rule would put: (1) applicants for NRC licenses; (2) applicants for, and holders of, certificates of compliance issued under 10 CFR Parts 71 and 72, including those for dry cask storage; (3) applicants for, and holders of, early site permits, standard design certifications, or combined licenses issued under 10 CFR Part 52;

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(4) applicants for, and holders of, certificates of registration issued under 10 CFR Parts 30 and 32; (5) applicants for, and holders of, quality assurance program approvals issued under 10 CFR Part 71; and (6) the employees, contractors, subcontractors and consultants of the first five categories of persons on notice that they are subject to the Deliberate Misconduct Rule and, therefore, are subject to civil enforcement action if they deliberately cause a licensee, certificate holder, or an applicant for a license or certificate to be in violation of NRC requirements. The final rule does not impose any additional obligations on entities that may fall within the definition of "small entities" as set forth in Section 601(6) of the Regulatory Flexibility Act; or within the definition of "small business" as found in Section 3 of the Small Business Act, 15 U.S.C. 632; or within the size standards adopted by the NRC on April 11, 1995 (60 FR 18344).

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.

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Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

Enforcement Policy

Concurrently with publication of the Deliberate Misconduct Final Rule, the Commission is publishing modifications to NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions," to address enforcement action against the categories of unlicensed persons listed under this Final Rule.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 32

Byproduct material, Criminal penalties, Nuclear materials, Labeling, Radiation protection, Reporting and recordkeeping requirements.

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10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

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Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

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10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons stated in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150.

PART 30--RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING
OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

AUTHORITY: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 30.1, is revised to read as follows:

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§ 30.1 Scope.

This part prescribes rules applicable to all persons in the United States governing domestic licensing of byproduct material under the Atomic Energy Act of 1954, as amended (68 Stat. 919), and under title II of the Energy Reorganization Act of 1974 (88 Stat. 1242), and exemptions from the domestic licensing requirements permitted by Section 81 of the Act. This part also gives notice to all persons who knowingly provide to any licensee, applicant, certificate of registration holder, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, applicant's or certificate of registration holder's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 30.10.

3. Section 30.10 is revised to read as follows:

§ 30.10 Deliberate misconduct.

(a) Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's or applicant's activities in this part, may not:

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(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, certificate of registration holder, an applicant, or a licensee's, certificate holder's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee, certificate of registration holder or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.

PART 32--SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER

CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

4. The authority citation for Part 32 continues to read as follows:

AUTHORITY: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

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5. Section 32.1(b) is revised to read as follows:

§ 32.1 Purpose and scope.

* * * *

(b) The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of Part 30 of this chapter apply to applications, licenses and certificates of registration subject to this part.

PART 40--DOMESTIC LICENSING OF SOURCE MATERIAL

6. The authority citation for Part 40 continues to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

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7. Section 40.2, is revised to read as follows:

§ 40.2 Scope.

Except as provided in §§ 40.11 to 40.14, inclusive, the regulations in this part apply to all persons in the United States. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 40.10.

8. Section 40.10 is revised to read as follows:

§ 40.10 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

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(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 50--DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

9. The authority citation for Part 50 continues to read as follows:

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955,

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as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

10. Section 50.1, is revised to read as follows:

§ 50.1 Basis, purpose, and procedures applicable.

The regulations in this part are promulgated by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242), to provide for the licensing of production and utilization facilities. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 50.5.

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11. Section 50.5 is revised to read as follows:

§ 50.5 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

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(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 52--EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS;
AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

12. The authority citation for Part 52 is revised to read as follows:

AUTHORITY: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

13. Section 52.1 is revised to read as follows:

§ 52.1 Scope.

This part governs the issuance of early site permits, standard design certifications, and combined licenses for nuclear power facilities licensed under Section 103 or 104b of the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242). This part also gives notice to all persons who knowingly provide to any holder of or applicant for an early site permit, standard design certification, or combined license, or to a contractor, subcontractor, or consultant of any of them, components, equipment, materials, or other goods or services, that relate to the activities of a holder of or applicant for an

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early site permit, standard design certification, or combined license, subject to this part, that they may be individually subject to NRC enforcement action for violation of § 52.9.

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14. Section 52.9 is added to read as follows:

§ 52.9 Deliberate Misconduct.

(a) Any holder of, or applicant for, an early site permit, standard design certification, or combined license, including its employees, contractors, subcontractors, or consultants and their employees, who knowingly provides to any holder of, or applicant for, an early site permit, standard design certification, or combined license, or to a contractor, subcontractor or consultant of any of them, equipment, materials, or other goods or services that relate to the activities of a holder of, or applicant for, an early site permit, standard design certification or combined license in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a holder of, or applicant for, an early site permit, standard design certification, or combined license, to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any permit, certification or license issued by the Commission; or

(2) Deliberately submit to the NRC, a holder of, or applicant for, an early site permit, standard design certification, or combined license, or a contractor, subcontractor, or consultant of any of them, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

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(1) Would cause a holder of, or applicant for, an early site permit, standard design certification, or combined license, to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a holder of, or applicant for, an early site permit, certified design or combined license, or a contractor or subcontractor of any of them.

PART 60--DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES
IN GEOLOGIC REPOSITORIES

15. The authority citation for Part 60 continues to read as follows:

AUTHORITY: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141) and Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

16. Section 60.1, is revised to read as follows:

§ 60.1 Purpose and Scope.

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This part prescribes rules governing the licensing of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated in accordance with the Nuclear Waste Policy Act of 1982. This part does not apply to any activity licensed under another part of this chapter. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 60.11.

17. Section 60.11 is revised to read as follows:

§ 60.11 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

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(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

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(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 61--LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

18. The authority citation for Part 61 continues to read as follows:

AUTHORITY: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102-486, sec 2902, 106 Stat. 3123, (42 U.S.C. 5851).

19. Section 61.1 (c), is revised to read as follows:

§ 61.1 Purpose and Scope.

* * * * *

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(c) This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 61.9b.

20. Section 61.9b is revised to read as follows:

§ 61.9b Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

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(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 70--DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

21. The authority citation for Part 70 continues to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

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22. Section 70.2, is revised to read as follows:

§ 70.2 Scope.

Except as provided in §§ 70.11 to 70.13, inclusive, the regulations in this part apply to all persons in the United States. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 70.10.

23. Section 70.10 is revised to read as follows:

§ 70.10 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

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(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 71--PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

24. The authority citation for Part 71 continues to read as follows:

AUTHORITY: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

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25. In section 71.0, paragraph (f) is added to read as follows:

§ 71.0 Purpose and Scope.

* * * * *

(f) This part also gives notice to all persons who knowingly provide to any licensee, certificate holder, quality assurance program approval holder, applicant for a license, certificate, or quality assurance program approval or to a contractor, or subcontractor of any of them, components, equipment, materials, or other goods or services, that relate to a licensee's, certificate holder's, quality assurance program approval holder's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 71.11.

26. Section 71.11 is added to read as follows:

* * * * *

§ 71.11 Deliberate misconduct.

(a) This section applies to any---

(1) Licensee;

(2) Certificate holder;

(3) Quality assurance program approval holder;

(4) Applicant for a license, certificate, or quality assurance program approval;

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(5) Contractor (including a supplier or consultant) or subcontractor, to any person identified in paragraphs (a)(1) through (a)(4) of this section; or

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(6) Employee of any person identified in paragraphs (a)(1) through (a)(5) of this section.

(b) A person identified in paragraph (a) of this section who knowingly provides to any entity, listed in paragraphs (a)(1) through (a)(5) of this section any components, materials, or other goods or services that relate to a licensee's, certificate holder's, quality assurance program approval holder's or applicant's activities subject to this part may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate holder, quality assurance program approval holder, or any applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license, certificate or approval issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, a certificate holder, quality assurance program approval holder, an applicant for a license, certificate or quality assurance program approval, or a licensee's, applicant's, certificate holder's or quality assurance program approval holder's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(c) A person who violates paragraph (b)(1) or (b)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

(d) For the purposes of paragraph (b)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee, certificate holder, quality assurance program approval holder or applicant for a license, certificate, or quality assurance program approval to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license or certificate issued by the Commission; or

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(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate holder, quality assurance program approval holder, applicant, or the contractor or subcontractor of any of them.

PART 72--LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

27. The authority citation for Part 72 continues to read as follows:

AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 295 as amended by Pub.L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 935 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a),

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10161(h)). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

28. In section 72.2, paragraph (f) is revised to read as follows:

§ 72.2 Scope.

* * * *

(f) This part also gives notice to all persons who knowingly provide to any licensee, certificate holder, applicant for a license or certificate, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, certificate holder's, or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 72.12.

29. Section 72.12 is revised to read as follows:

§ 72.12 Deliberate misconduct.

(a) Any licensee, certificate holder, applicant for a license or certificate, employee of a licensee, certificate holder, or applicant for a license or certificate; or any contractor (including a supplier or consultant) or subcontractor, employee of a contractor or subcontractor of any licensee, certificate holder, or applicant for a license or certificate who knowingly provides to any licensee, certificate holder, applicant for a license or

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certificate, contractor, or subcontractor, any components, materials, or other goods or services that relate to a licensee's, certificate holder's, or applicant's activities subject to this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate holder or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license or certificate issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, a certificate holder, an applicant for a license or certificate, or a licensee's, applicant's, or certificate holder's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee, certificate holder or applicant for a license or certificate to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license or certificate issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate holder, applicant, contractor, or subcontractor.

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PART 110--EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

30. The authority citation for Part 110 continues to read as follows:

AUTHORITY: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; sec 5, Pub. L. 101-575, 104 Stat 2835 (42 U.S.C.2243)).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96-92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99-440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130-110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42 (a)(9) also issued under sec. 903, Pub. L. 102-496 (42 U.S.C. 2151 et seq.).

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31. In Section 110.1, paragraph (a) is revised to read as follows:

§ 110.1 Purpose and Scope.

(a) The regulations in this part prescribe licensing, enforcement, and rulemaking procedures and criteria, under the Atomic Energy Act, for the export of nuclear equipment and material, as set out in §§ 110.8 and 110.9, and the import of nuclear equipment and material, as set out in § 110.9a. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 110.7b.

32. Section 110.7b is revised to read as follows:

§ 110.7b Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

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(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 150--EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

33. The authority citation for Part 150 continues to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued

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under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub.L.

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97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

34. Section 150.2 is revised to read as follows:

§ 150.2 Scope.

The regulations in this part apply to all States that have entered into agreements with the Commission or the Atomic Energy Commission pursuant to subsection 274b of the Act. This part also gives notice to all persons who knowingly provide to any licensee, applicant for a license or certificate or quality assurance program approval, holder of a certificate or quality assurance program approval, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's, quality assurance program approval holder's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of §§ 30.10, 40.10, 70.10 and 71.11.

Dated at Rockville, Maryland, this ____ day of _____, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.

NUCLEAR REGULATORY COMMISSION

[NUREG - 1600]

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.

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

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

SUPPLEMENTARY INFORMATION:

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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, or 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

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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

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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.

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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

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.

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

* * * * *

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.

* * * * *

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.

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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.

* * * * *

VI. ENFORCEMENT ACTIONS

* * * * *

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 impacts of a civil penalty be so severe that it

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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

* * * * *

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

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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.

* * * * *

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.

* * * * *

VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

* * * * *

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.

The Commissioners

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

The Commissioners

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.

* * * * *

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;

* * * * *

SUPPLEMENT VII--MISCELLANEOUS MATTERS

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

* * * * *

Dated at Rockville, Maryland, this ____ day of _____ 1997.

For The Nuclear Regulatory Commission.

The Commissioners

John C. Hoyle,
Secretary of the Commission.

The Commissioners

ENCLOSURE 3

CONGRESSIONAL LETTERS

The Commissioners

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed for the information of the subcommittee is a copy of a notice of a final rule dealing with deliberate misconduct to be published in the Federal Register. The Nuclear Regulatory Commission (NRC) is amending its regulations to expand the Deliberate Misconduct Rule where it appears in 10 CFR Parts 30, 40, 50, 60, 61, 70, 72, and 110 and adds the rule to Parts 32, 52, and 71. These modifications extend the rule to: (1) applicants for NRC licenses; (2) applicants for, or holders of, certificates of compliance; (3) applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants; (4) applicants for, or holders of, certificates of registration; (5) applicants for, or holders of, quality assurance program approvals; and (6) the employees, contractors, subcontractors and consultants of the first five categories of persons, so that they may be subject to enforcement action. In addition, the scope of 10 CFR 150.2 was changed to provide notice to the above categories of persons when conducting activities under reciprocity in areas of NRC jurisdiction.

The Deliberate Misconduct Rule was originally issued in 1991 (56 FR 40664). Deliberate misconduct may involve providing information that is known to be incomplete or inaccurate in some respect material to the NRC, or it may involve deliberate conduct that causes or would have caused, if not detected, a licensee, certificate holder, or applicant to be in violation of any of the Commission's requirements. The NRC believes that because there may be significant safety consequences from the intentional submittal of materially incomplete or inaccurate information or other deliberate wrongdoing by such persons, the categories of persons cited above also should be subject to enforcement action under the Commission's rules regarding deliberate misconduct. In addition, the NRC's Enforcement Policy is modified concurrently to reflect these changes to the regulations.

The Commission is issuing the final rule for publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Bob Graham

The Commissioners

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private
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Committee on Environment and Public Works
United States Senate
Washington, DC 20510

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DATE:	06/20/97	07/31/97	08/05/97	/ /97	/ /96
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The Honorable James M. Inhofe

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The Commissioners

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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The Commission is issuing the final rule for publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Ralph Hall

The Commissioners

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Subcommittee on Energy and Power
Committee on Commerce
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Sincerely,

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Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Ralph Hall

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The Honorable Dan Schaefer

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The Commissioners

ENCLOSURE 4

PUBLIC ANNOUNCEMENT

**NRC AMENDING REQUIREMENTS GOVERNING DELIBERATE MISCONDUCT
BY UNLICENSED PERSONS**

The Nuclear Regulatory Commission is adopting amendments to NRC regulations that established the Deliberate Misconduct Rule, in September 1991. The original rule failed to include a number of categories of persons who engage in activities within the Commission's subject matter jurisdiction. The amendments extend the Deliberate Misconduct Rule to six new categories of persons:

(1) applicants for NRC licenses; (2) applicants for, or holders of, certificates of compliance; (3) applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants; (4) applicants for, or holders of, certificates of registration; (5) applicants for, or holders of, quality assurance program approvals; and (6) the employees, contractors, subcontractors and consultants of the first five categories of persons, so that they may be subject to enforcement action. Deliberate misconduct may involve providing information that is known to be incomplete or inaccurate in some respect material to the NRC, or it may involve conduct that causes or would have caused, if not detected, a licensee, certificate holder, or applicant to be in violation of any of the Commission's requirements. The NRC believes that because there may be significant safety consequences from the intentional submittal of materially incomplete or inaccurate information or other deliberate wrongdoing by such persons, these persons should be subject to enforcement action under the Commission's existing rules regarding deliberate misconduct. In addition, the NRC's Enforcement Policy is being modified concurrently to reflect these changes to the regulations.

###

The Commissioners

Mr. Robert P. Murphy

General Counsel

General Accounting Office

Room 7175

441 "G" Street, N.W.

Washington, DC 20548

Dear Mr. Murphy:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a final rule to amend its regulations to extend the Deliberate Misconduct Rule to six categories of persons: applicants for NRC licenses; applicants for, and holders of, certificates of compliance; applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants; applicants for, or holders of, certificates of registration; applicants for, or holders of, quality assurance program approvals; and the employees, contractors, subcontractors, and consultants of the above five categories of persons, so that they may be subject to enforcement action for deliberate misconduct. Deliberate misconduct may involve providing information that is known to be incomplete or inaccurate in some respect material to the NRC, or it may involve conduct that causes or would have caused, if not detected, a licensee, certificate holder, or applicant to be in violation of any of the Commission's requirements. The NRC believes that because there may be significant safety consequences from the intentional submittal of incomplete or inaccurate information or other deliberate wrongdoing by such persons, these persons should be subject to enforcement action under the Commission's existing rules regarding deliberate misconduct. In addition, the NRC's Enforcement Policy is modified concurrently to reflect these changes to the regulations.

The Commissioners

We have determined that this rule is not a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed is a copy of the final rule, which is being transmitted to the Office of the Federal Register for publication. The Regulatory Flexibility Certification is included in the final rule. A Regulatory Analysis has been prepared for this final rule and is included in the Federal Register notice, however the benefits derived from the changes to the current regulation are similar to those provided by the Deliberate Misconduct Rule, which became effective on September 16, 1991.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Rule

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The Commissioners

significant safety consequences from the intentional submittal of incomplete or inaccurate information or other deliberate wrongdoing by such persons, these persons should be subject to enforcement action under the Commission's existing rules regarding deliberate misconduct. In addition, the NRC's Enforcement Policy is modified concurrently to reflect these changes to the regulations.

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Office of Congressional Affairs

Enclosure: Final Rule

The Commissioners

The Honorable Newt Gingrich

Speaker of the United States

House of Representatives

Washington, DC 20515

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The Commissioners

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Office of Congressional Affairs

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The Commissioners

The Honorable Al Gore

President of the United

States Senate

Washington, DC 20510

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