

December 23, 2005

MEMORANDUM TO: Luis A. Reyes  
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - SECY-05-0212 - PROPOSED  
RULEMAKING - CLARIFICATION OF NRC CIVIL PENALTY  
AUTHORITY OVER CONTRACTORS AND SUBCONTRACTORS  
WHO DISCRIMINATE AGAINST EMPLOYEES FOR ENGAGING  
IN PROTECTED ACTIVITIES (RIN 3150-AH59)

The Commission has approved the staff's plan to publish in the *Federal Register* a proposed rule to amend employee protection regulations to exercise NRC's authority to impose civil penalties against contractors and subcontractors, subject to the changes noted below. Also, the Commission has certified that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities. The Commission has not objected to the staff's designation of this proposed rule as Compatibility Category D.

Changes to the *Federal Register* Notice

1. Page 5, paragraph 1, revise line 10 to read ' ... the Act, or **any term, condition, or limitation of any license or certification issued thereunder, or** who commits ....'
2. Page 6, footnote 1, revise line 1 to read ' ... case, **CLI-93-23**, 38 NRC ....'
3. Page 7, line 3 from the top, insert a period after "licensee" and delete the remainder of the sentence (... for example, ... situation.) Revise line 6 to read '~~Although the~~ **The** Commission ....' Revise lines 7 and 8 to read ' ... and subcontractors. **T**he Commission believes that these amendments are necessary and will **offer additional enhancements to the** ....'
4. Page 10, revise line 1 from the top to read ' ...Agency-wide Documents Access ....'
5. Page 11, line 12 from the top, remove the space between "can" and "not".
6. Page 15, next to last paragraph, remove the space between "record" and "keeping".
7. Page 23, paragraph (2), lines 1 and 2, delete "certificate holder".
8. Page 24, paragraph (2), last line, delete the comma.

While the staff is amending several relevant sections at this time, they should ensure that any subsequent rulemakings are consistent with this approach. For instance, if Part 52 is revised, it should be examined to determine whether any regulation concerning employee protection needs to be modified to reflect the imposition of civil penalties against contractors and subcontractors, in addition to licensee, holders of a standard design approval, or applicants.

The Statements of Consideration should solicit comments from stakeholders regarding Category D designation of these regulations.

The staff should draft appropriate legislative language to be provided in any future legislative request to Congress for the extension of this rulemaking to cover those certificate holders thus far excluded. This should be a low priority for the staff.

cc: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons  
OGC  
CFO  
OCA  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR