

NUCLEAR REGULATORY COMMISSION

NRC Enforcement Policy Revision

[NRC-2008-0497]

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is publishing a major revision to its Enforcement Policy (Enforcement Policy or Policy) to clarify the use of terms and update the Policy, removing outdated information and adding information addressing enforcement issues in areas that are not currently directly addressed in the Policy.

DATES: This revision is effective on [INSERT DATE OF PUBLICATION]. The NRC intends to solicit comments on this revised Policy approximately 18 months after the effective date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID **NRC-2008-0497** in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC website and on the Federal rulemaking website Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Website: Go to <http://www.regulations.gov> and search for documents filed under Docket ID **NRC-2008-0497**. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch, Office of Administration, Mail Stop:TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

You can access publicly available documents related to this notice using the following methods:

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You can access publicly available documents related to this proposed rule using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS):

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

The NRC maintains the Enforcement Policy on its Web site at <http://www.nrc.gov>; select **Public Meetings and Involvement, Enforcement**, and then **Enforcement Policy**.

FOR FURTHER INFORMATION CONTACT: Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Doug.Starkey@nrc.gov, 301- 415-3456.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 2007 (72 FR 3429), the NRC published a notice announcing that the NRC was undertaking a major revision of its Enforcement Policy. On September 15, 2008 (73 FR 53286), the NRC published a notice of availability of draft and request for comments on its proposed revised Policy. A corrected proposed revised Policy was published (73 FR 61442) on October 16, 2008. The public comment period for the revised Policy ended on November 14, 2008. On June 8, 2009 (74 FR 27191), the NRC published a notice of availability and request for comments on additional proposed revisions to Section 6.0, Supplements-Violation Examples, of the proposed revised Policy. The June 8, 2009, Notice of Availability and request for comments applied only to additional proposed revisions to Section 6.0 of the proposed revised Policy. The public comment period for the proposed revised Supplements ended on July 8, 2009.

As discussed in the Supplementary Information of the September 15, 2008 (73 FR 53286) document, the NRC, in developing the revised Policy, in many instances proposed to reword, delete, or move (i.e., move to the NRC Enforcement Manual, an NRC staff guidance document) some of the information in the current Policy. In addition, the NRC had also planned to add detailed violation examples to the Enforcement Manual to serve as further

guidance to NRC inspectors. However, based on public comments received in response to the September and October 2008 publications of the proposed revised Enforcement Policy, the NRC reconsidered its original plan to have abbreviated violation examples in the revised Policy and detailed violation examples in the Enforcement Manual. The NRC will continue its past practice of providing violation examples in the Enforcement Policy. These revised violation examples cover a broad range of circumstances in each of the four severity levels in each of 14 activity areas. Also, much of the material that the NRC had originally planned to remove from the revised Policy was subsequently retained based in part on comments received during the 2008 and 2009 public comment periods.

A summary of the comments and the NRC's responses associated with the 2008 and 2009 Notices are available at [NRC's Electronic Reading Room](#) or accessible via ADAMS Accession Numbers ML091830260 and ML092650309, respectively.

Summary of Major Revisions to the Enforcement Policy

1. Revisions to Table of Base Civil Penalties.

Regulatory requirements have varying degrees of safety, security, or environmental significance. For that reason, the NRC imposes various base civil penalties depending on the specific circumstances. Section 8.0, Tables A and B, of the revised Enforcement Policy set forth the base civil penalties for various reactor, fuel cycle, material, and vendor programs. The NRC uses a graded approach in assessing civil penalties based on the severity level of the violation and on the class of licensee, vendor, or other person. Base civil penalties generally take into account the significance of a violation as the primary consideration, whereas the licensee's ability to pay is a secondary consideration. The NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base

civil penalties in Table A for Severity Level I, II, and III violations as reflected in Table B of the Enforcement Policy (i.e., 100 percent for Severity Level I violations, 80 percent for Severity Level II violations, and 50 percent for Severity Level III violations). However, in no instance would a civil penalty for any one violation exceed the current statutory limit, which is presently capped at \$140,000 per day per violation. In consideration of the above, the following revisions have been made to the Table of Base Civil Penalties:

a. Geologic Repository for Spent Fuel and/or High-Level Waste Repository

The Table of Base Civil Penalties in the current Enforcement Policy has no provisions that address a geologic repository. Therefore, the NRC is revising the civil penalty table in the revised Policy to include geologic repositories to ensure that, if the need arises, the NRC has the appropriate tools to take enforcement actions.

Based on the potential nuclear material inventory involved at a geologic repository and the corresponding safety consequences that could arise at the site (specifically to employees), the NRC determined that the statutorily allowed maximum base civil penalty for a Severity Level I violation is appropriate. In determining the base civil penalty that should be applied to a geologic repository, the NRC also considered that the licensing criteria used in developing 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories," and 10 CFR Part 63, "Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada," were comparable to the criteria applied to reactors and spent fuel facilities. The NRC has included this information in Table A of the revised Policy under the generic heading "High-Level Waste Repository" to address the possibility of any future engineered underground disposal facilities used for the storage of HLW.

b. Uranium Enrichment Facilities.

The current Enforcement Policy only provides a base civil penalty for gaseous diffusion plants (GDPs) and does not address other enrichment facilities such as gas centrifuge or laser enrichment facilities. The NRC has issued licenses for two gas centrifuge uranium enrichment facilities with enrichment levels of up to 5 weight percent uranium-235 (U-235) and 10 weight percent U-235 and licensed a pilot laser enrichment facility. Currently, NRC is performing the licensing review for a third uranium enrichment facility with an enrichment level of 5 weight percent uranium-235. Therefore, the NRC believes that it is appropriate to provide a base civil penalty for these types of facilities at this time.

In developing a base civil penalty for uranium enrichment facilities, the staff compared the radiological, chemical hazards of licensed materials, criticality and security hazards of these facilities with both gaseous diffusion plants (GDPs) and Category III fuel fabricators and, through an overall comparison, provided an appropriate base civil penalty. Both enrichment facilities and Category III fuel fabricators have Category III special nuclear material (i.e., these facilities are limited to enrichments of less than 20 percent of U-235 (special nuclear material of low strategic significance)). In addition, the radiological and chemical risks of gas centrifuge uranium enrichment facilities are considered very similar to Category III fuel fabricators. Therefore, the necessary physical protection and material control and accounting requirement (based on the category of facility) for uranium enrichment facilities are similar to those required for Category III fuel fabricators. For these reasons, the staff believes that the base civil penalty for Severity Level I violations at uranium enrichment facilities in Table A should be established at \$35,000, the same as the amount already established for Category III fuel fabricators. For these reasons, the staff believes that the base civil penalty for Severity Level I violations at uranium enrichment facilities in Table A should be established at \$35,000, the same as the amount already established for Category III fuel fabricators.

c. Uranium Conversion Facilities.

The staff proposes to increase the base civil penalty for enforcement activities associated with uranium conversion facilities to \$70,000 from the current amount of \$14,000. Presently, the only operating uranium conversion plant in the United States is the Honeywell facility located in Metropolis, IL.

Currently, uranium conversion facilities are in the same base civil penalty category as test reactors and industrial radiographers with a base civil penalty amount of \$14,000. The staff compared the radiological, chemical hazards of licensed materials, criticality hazards of a conversion facility to similar hazards at GDPs and Category III fuel fabricators and concluded that the radiological and chemical hazards at uranium conversion facilities are similar in comparison to those of GDPs. However, the criticality risk present at a GDP and Category III fuel fabricators is not a major risk factor at a uranium conversion facility.

The staff also considered the security implications associated with the operation of uranium conversion facilities as compared to the operation of GDPs and to Category III fuel fabricators. That comparison indicates that the security and safeguards measures necessary at a uranium conversion facility are similar to or less than those of Category III fuel fabricators and GDPs. However, because of the large number of potential chemical hazards associated with licensed materials and certain radiological hazards, protection against potential criminal activities is required to protect worker and public health and safety.

In comparison, the overall radiological hazards and chemical hazards associated with licensed materials for uranium conversion facilities are much more significant than those of test reactors and industrial radiographers and Category III fuel fabricators but less than those of GDPs. For these reasons, the staff believes that the base civil penalty for violations at uranium conversion facilities in Table A should be established at \$70,000, which is the same amount

established for fuel fabricators authorized to possess Category I or II quantities of special nuclear material.

2. Other Major Revisions to the Enforcement Policy.

a. Interim Enforcement Policy Regarding the Use of Alternative Dispute Resolution.

The Interim Enforcement Policy on the Use of Alternative Dispute Resolution (ADR) was established to set forth an interim Policy that the NRC would follow while undertaking a pilot program to test the use of ADR. Because the ADR pilot program has been successfully completed and the ADR program has since been fully implemented, the staff has revised the Policy statement on ADR to reflect this change.

b. Violation Examples.

The violation examples have been reorganized and expanded from the 8 activity areas contained in the current Enforcement Policy to 14 activity areas in the revised Policy. These changes were made for clarification and ease of use; in other cases, the activity areas reflect changes made to NRC regulations. For example, the NRC rewrote the facility construction violation examples to include licensees under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," and fuel cycle facilities. Fuel cycle and materials operations were reorganized into separate activity areas. New activity areas were added for reactor and fuel facility security, materials security, information security, and fitness for duty.

c. Addition of a Glossary.

A Glossary, containing many of the terms commonly used throughout the NRC enforcement process, has been added to the revised Policy.

d. Revision to previous *Federal Register* Notice.

The revised Enforcement Policy includes a proposed revision to a previous *Federal Register* Notice, "Base Civil Penalties for Loss, Abandonment, or Improper Transfer or Disposal of Sources; Policy Statement," published December 18, 2000 (65 FR 79139). Specifically, the

NRC replaced the term “sealed source or device” with the term “regulated material” both in the body of the revised Policy, Section 2.3.4, and in the Table of Base Civil Penalties, Table A, category f. The term “sealed” was deleted from this section since the same enforcement approach is used for both sealed and unsealed sources. The term “regulated material” captures all present and future NRC regulated material.

PROCEDURAL REQUIREMENTS

Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements 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 (OMB), approval number 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Congressional Review Act

In accordance with the Congressional Review 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.

Dated at Rockville, MD, this ____ day of _____ 2010.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman, Director
Office of Enforcement.