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[7590-01-P]

## NUCLEAR REGULATORY COMMISSION

[NRC-2013-0159]

### Nuclear Regulatory Commission Enforcement Policy

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Enforcement policy; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is conducting an assessment and seeking stakeholder views on issues relating to a potential revision to the Enforcement Policy regarding issuance of orders banning individuals from NRC-licensed activities for less than 1 year and expanding the use of civil penalties in cases involving deliberate misconduct by individuals.

**DATES:** Submit comments by **[INSERT DATE 60 DAYS AFTER PUBLICATION]**. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0159. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN-6A44MP, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** John R. Wray, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1288; e-mail: [John.Wray@nrc.gov](mailto:John.Wray@nrc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Accessing Information and Submitting Comments**

#### **A. Accessing Information**

Please refer to Docket ID NRC-2013-0159 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0159.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly-available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The Enforcement Policy is available in ADAMS under Accession No. ML12340A295.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- **NRC's Public Web Site:** Go to <http://www.nrc.gov> and select “Public Meetings and Involvement,” then “Enforcement,” and then “Enforcement Policy.”

## B. Submitting Comments

Please include Docket ID NRC-2013-0159 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment

submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## **II. Background**

In SECY-12-0047, "Revisions to the Nuclear Regulatory Commission Enforcement Policy," dated March 28, 2012 (ADAMS Accession No. ML12045A025), the staff recommended that the Commission approve the staff's plan to revise the Enforcement Policy with specific modifications which addressed items from Staff Requirements Memorandum (SRM), "Staff Requirements – SECY-09-0190 – Major Revision to NRC Enforcement Policy," dated August 27, 2010 (ADAMS Accession No. ML102390327). The staff also indicated in SECY-12-0047 that it was considering the merits and potential implications of expanding the use of civil penalties in cases involving deliberate misconduct by individuals (licensed or unlicensed) and of issuing orders banning individuals (licensed or unlicensed) for less than 1 year, and that, based on its evaluation, the staff might propose to the Commission future changes to the Enforcement Policy. In SRM-SECY-12-0047, "Revisions to the Nuclear Regulatory Commission Enforcement Policy," dated November 28, 2012 (ADAMS Accession No. ML12333A301), the Commission

approved the staff's proposed Enforcement Policy changes and, in addition, directed the staff to evaluate potential future revisions of the Enforcement Policy regarding issuance of orders banning individuals from NRC-licensed activities for periods of less than 1 year and expanding the use of civil penalties in cases involving deliberate misconduct by individuals. The Commission stated that the staff should carefully consider the potential implications and potential benefits of such revisions to the NRC Enforcement program, including:

- The risk of diminishing the impact of imposing a ban, or imposing civil penalties so small that they downplay the seriousness of a violation;
- The difficulty in maintaining the clarity, consistency, and certainty of the process while attempting to weigh different sets of circumstances to determine appropriate periods of time for such bans; and
- The fact that a ban of any length of time may have serious consequences for the individual who is banned.

### **III. Discussion**

The NRC staff is considering the merits and potential implications associated with revising the Enforcement Policy to endorse expanding the use of civil penalties in cases involving deliberate misconduct by individuals and issuance of orders banning individuals from NRC-licensed activities for less than 1 year. As described in Section 4.0 of the Enforcement Policy, the NRC considers taking enforcement action against individuals who engage in deliberate misconduct that causes a licensee to be in violation of the regulations, an order, or the terms and conditions of an NRC license. In addition, the NRC considers taking enforcement action against individuals (licensed or unlicensed) to whom the NRC has issued an order that

the individual subsequently violated. If enforcement action is taken against an individual, the staff normally issues either a notice of violation (NOV) or an order prohibiting involvement in NRC-licensed activities (i.e., a ban). Except in cases involving violations of Section 206 of the Energy Reorganization Act of 1974, the NRC normally does not impose civil penalties against individuals, consistent with a basic tenet in Section 4.0 of the Enforcement Policy that licensees are held responsible for acts of their employees. However, under section 234 of the Atomic Energy Act of 1954, as amended, the NRC has the authority to impose civil penalties on individuals who violate the NRC's deliberate misconduct rule.

The initial determination of the duration of a ban is normally based on the significance of the underlying violation and the individual's level of responsibility in the organization. When the NRC has, in the past, deemed that banning an individual was warranted, the length of the ban has typically been for 1, 3, or 5 years, although longer bans have been used in particularly egregious cases. However, the Enforcement Policy does not provide that level of specificity but, instead, merely states that normally the period of suspension would not exceed 5 years.

The staff acknowledges that a ban of a year or more can have a significant effect on the responsible individual's livelihood, and that there is a significant disparity between the impacts of an NOV and a 1-year ban. Therefore, the staff believes that, depending on the significance of an individual's actions, the use of other sanctions in individual enforcement actions warrants further review. For example, two possible alternatives whose impacts would fall between those of an NOV and a 1-year ban could be issuing a civil penalty or a ban of 6 months.

Therefore, the staff intends to evaluate advantages and disadvantages of expanding the use of civil penalties in cases involving deliberate misconduct by individuals and of issuing bans for less than 1 year. In considering these options, the staff is soliciting public comment on both the concept and possible specifics related to a potential revision to the Enforcement Policy and

other program documents describing these alternatives. Specifically, the staff is seeking stakeholder input including but, not limited to, the following:

- Given that an individual who has engaged in deliberate misconduct is offered the opportunity to participate in the NRC's Alternative Dispute Resolution (ADR) process, in which modifications to an individual sanction can include a ban for less than 1 year or a civil penalty, is there a benefit to modifying the Enforcement Policy?
- When individual action is deemed necessary, how should the NRC determine whether that action should be an NOV, a civil penalty, or a ban?
- What is the risk of an employer simply "reimbursing" an individual for a civil penalty if production is put ahead of safety? Should the NRC be concerned with such a potential and, if so, how would it be mitigated?
- Regarding the amount of a civil penalty issued to individuals, how can the NRC assure that the Enforcement Policy would be applied in a fair and consistent manner? Specifically, how should the amount of a civil penalty be determined? Should a set individual civil penalty amount be used, or should the individual civil penalty amount be calculated based on specific factors:
  - If a set individual civil penalty amount should be used, what would be the appropriate amount? Would it be fair to propose the same civil penalty amount on individuals regardless of salaries?
  - If a variable individual civil penalty amount should be used, what factors (e.g. salary level of individual, safety significance of violation, benefit or hardship to the individual, etc.) should be considered, and how should they be included in the calculation?
- With respect to the use of either civil penalties or bans for less than 1 year, would there be any unintended consequences the NRC should consider? If so, provide examples.

Based on the written comments received from stakeholders, the staff may conduct a public meeting to provide for further discussions. The NRC will use any public input received as part of its evaluation to determine the merits and potential implications of expanding the use of civil penalties in cases involving deliberate misconduct by individuals and of issuing bans for less than 1 year, including the feasibility of developing criteria to ensure their fair and consistent application. Following its evaluation, the staff may propose changes to the Enforcement Policy to the Commission for its consideration.

Dated at Rockville, Maryland, this 16<sup>th</sup> day of July 2013.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman, Director  
Office of Enforcement

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