recalculated prior to the next time the state calculates rates for all employers, states have latitude in this matter.

1–7. Question: The answer to Q&A 9 in UIPL 30–04, says that where ''[a]n employee of one legal entity is moved to another legal entity,'' no transfer of experience is required. (Emphasis added.) However, the answer to Q&A 13 in that UIPL says the SUTA Dumping amendment applies to ''all transfers, large and small.'' What is the distinction between the two?

Answer: Q&A 13 applies to cases where there is a transfer of trade or business. (Q&As 5 and 14 in UIPL 30–04 and 1–2 in this UIPL also apply to situations where trade or business is transferred.)

The answer to Q&A 9 applies to cases where an employee is ''moved'' from one legal entity to another, but where there is no transfer of trade or business. For example, an owner of two separate legal entities ''moves'' an individual from head of widget making for Entity A to head of graphic design for Entity B, but does not transfer any of the widget-making trade/business to Entity B. In this case, no trade or business is transferred and the ''move'' of the individual is in the nature of a reassignment.

In cases where no trade or business has been transferred, experience may not be transferred. Therefore, when an employee's ''move'' is merely in the nature of a reassignment, the state may not transfer experience.

1–8. Question: State law allows employers to voluntarily combine their experience rating histories into joint accounts under certain conditions. Does the SUTA dumping legislation affect this?

Answer: No. Joint accounts may continue to be established in accordance with state law.

The SSA's mandatory transfer provisions affect joint accounts in the same way they affect individual employer accounts. That is, if an employer participating in a joint account transfers trade or business to another employer and a transfer of experience is required under provisions of state law implementing the SSA's mandatory transfer provisions, then any subsequent calculation of the experience rate of the joint account must take into account this transfer.

1–9. Question: Do the amendments mandating a transfer of experience affect what constitute taxable wages?

Answer: The amendments address the transfer of experience and of rates based on that experience. They do not affect determinations of what constitute taxable wages under the state's law. As a result, after trade and business is transferred, the state may either give effect to taxable wages paid by the predecessor in determining whether the taxable wage base is met, or ''restart'' the taxable wage base for the individual at zero.

1–10. Question: Do the mandatory transfer provisions for SUTA Dumping apply when an employer is ''reorganized?''

Answer: The keys under section 303(k)(1)(A), SSA, are whether there is a transfer of trade or business and whether there is substantially common ownership, management, or control. Thus, the answer depends on whether the reorganization involves a transfer of trade or business between entities under substantially common ownership, management or control.

As used in bankruptcy law, a reorganization is a ''financial restructuring of a corporation, esp. in the repayment of debts, under a plan created by a trustee and approved by a court.'' (Black's Law Dictionary (8th edition, 2004).) Thus, if a single employer simply ''financially restructures'' itself, without transferring trade or business, then the mandatory transfer provisions do not apply.

In other cases, reorganizations are mergers of corporations which involve a transfer of trade or business. For example, a reorganization may be a ''restructuring of a corporation, as by a merger or recapitalization, in order to improve its tax treatment under the Internal Revenue Code.'' (Black's Law Dictionary (8th edition, 2004).) When there is a merger, the mandatory transfer provisions will apply if there is substantially common ownership, management, or control at the time of the transfer of trade or business.

Note the mandatory transfer provision of Section 303(k)(1)(A), SSA, does not speak in terms of ''acquisitions.'' In many reorganizations, there may be mergers involving stock swaps or stock-for-asset exchanges, and it may be argued that no ''acquisition'' has occurred, even though workforce has been moved to another legal entity within a corporate umbrella. For purposes of the mandatory SUTA dumping amendments, whether there has been an ''acquisition'' is immaterial. What is significant is whether trade or business was transferred when, at the time of the transfer, there is substantially common ownership, management, or control. If this occurs, then the experience must also be transferred.

Required Penalties—Section 303(k)(1)(D), SSA

1–11. Question: The draft legislative language attached to UIPL 30–04 provides that, in addition to any civil penalty, ''any violation of this section *may be* prosecuted as a'' criminal offense. (Emphasis added.) Does this mean that inclusion of criminal penalties is optional on the part of the state?

Answer: No, section 303(k)(1)(D), SSA, clearly requires that state law must provide that ''meaningful civil and criminal penalties'' are imposed under certain circumstances. (*See* Q&A 19 in UIPL 30–04.) The draft legislative language quoted in the question merely indicates that the state has discretion to apply criminal penalties as appropriate. As noted in Q&A 20 in UIPL 30–04, ''States will take into account the amounts at issue and the likelihood of successful prosecution in determining which cases will result in criminal prosecutions.''

1–12. Question: State law must provide for the imposition of penalties for persons who ''knowingly'' violate or attempt to violate those provisions of state law that implement section 303(k), SSA, and for those who ''knowingly'' advise another person to violate such provisions. Since it is often difficult to prove that an action is done ''knowingly,'' may state law provide that penalties may be imposed using a lower level of proof?

Answer: Yes. The ''knowingly'' test is the minimum standard that state law must contain to meet the requirements of Section 303(k)(1)(D), SSA. States must assure that any such test is at least as encompassing as the ''knowingly'' standard.

Statute of Limitations

1–13. Question: Assume a ''SUTA dump'' occurred five years before the state identified it. The state's statute of limitations prevents the state from assessing contributions more than three years prior to the date of detection. Does this statute of limitations conflict with the SUTA dumping amendments?

Answer: No. Nothing in the SUTA dumping legislation overrides a state's statute of limitations. As a result, in the above example, the state may limit its assessment of contributions to the three-year period provided in its statute of limitations.

Draft Legislative Language

1–14. Question: Subsection (c)(1) of the draft legislative language attached to UIPL 30–4 provides for civil penalties for persons knowingly violating or attempting to violate ''subsections (a) *and* (b) or any other provision of this Chapter related to determining the assignment of a contribution rate? (Emphasis added.) Should the ''and'' be an ''or''?

Answer: Yes. The word ''and'' could be read to mean that the person must have violated, or attempted to violate, both the mandatory transfer provision and the prohibited transfer provision. Therefore the draft legislative language should be corrected by changing ''and'' to ''or''.

Also, note there is a typo in subsection (e)(2) of the draft legislative language. ''Trade *of* business'' should be corrected to ''Trade *or* business.'' (Emphasis added.)

1–15. Question: Subsection (c)(4) of the draft legislative language attached to UIPL 30–4 provides that ''In addition to the penalty imposed by paragraph (1), any violation of this section may be prosecuted.* * *'' May ''section'' be changed to ''Chapter''?

Answer: Yes. Using the word ''chapter'' will have the effect of making the criminal penalties applicable to any other provision of the state's UC law related to determining the assignment of a contribution rate. Note that states are not required to apply the penalties they develop for SUTA dumping to other violations of state law. (*See* Q&A 24 in UIPL 30–04.)

[FR Doc. E4–3162 Filed 11–12–04; 8:45 am]

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MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Mississippi River Commission.

TIME AND DATE: 1 p.m., December 15, 2004.

PLACE: Mississippi River Commission Headquarters Building, 1400 Walnut Street, Vicksburg, MS.

STATUS: Open to the public for observation, but not for participation.

MATTERS TO BE CONSIDERED: The Commission will consider the Louisiana Coastal Area Ecosystem Restoration Study, Final Report and Environmental Impact Statement.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone (601) 634–5766.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–25391 Filed 11–10–04; 11:22 am]

BILLING CODE 3710–GX–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG–1600) (Enforcement Policy or Policy) to include an administrative change that provides that the appropriate Regional Administrator will issue all Notices of Enforcement Discretion (NOEDs) for power reactors.

DATES: This revision is effective November 15, 2004. Comments on this revision to the Enforcement Policy may be submitted on or before December 15, 2004.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD. You may also e-mail comments to *nrcrep@nrc.gov*.

The NRC maintains the current Enforcement Policy on its Web site at *http://www.nrc.gov*, select What We Do, Enforcement, then Enforcement Policy.

FOR FURTHER INFORMATION CONTACT: Herbert N. Berkow, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–1395, e-mail (*HNB@nrc.gov*) or Renée Pedersen, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2742, e-mail (*RMP@nrc.gov*).

SUPPLEMENTARY INFORMATION: Section VII.C of the Enforcement Policy describes the circumstances when the staff may exercise enforcement discretion in the form of a NOED for power reactors.

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation (LCO) or other license condition would involve: (1) An unnecessary plant transient; (2) performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions; or, (3) unnecessary delays in plant startup without a corresponding health and safety benefit. The staff may also grant enforcement discretion in cases involving severe weather or other natural phenomena. This decision is based upon balancing the public health and safety or common defense and security of not operating against the potential radiological or other hazards associated with continued operation, resulting in a determination that safety will not be impacted unacceptably by exercising this discretion. The Commission is to be informed expeditiously following the granting of a NOED in such situations.

In these circumstances, the NRC staff may choose to not enforce the applicable TS or other license condition. This enforcement discretion, designated as a NOED, is only exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. NRC guidance for implementing the NOED policy for power reactors is provided in the *NRC Inspection Manual* Part 9900 guidance.

The Enforcement Policy and implementing guidance have historically recognized the distinction between: (1) Those instances where a noncompliance is temporary and nonrecurring when an amendment is not practical, and (2) those instances where a noncompliance will occur during the brief period of time required for the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). In the first situation, the Regional Administrator has issued the NOED and subsequently documented the decision for granting the NOED. In the second situation, the Director, Office of Nuclear Reactor Regulation (NRR) has issued the NOED and subsequently documented the decision for granting the NOED. In other words, the current distinction between region-issued and NRR-issued NOEDs for power reactors is based on the duration of the NOED and whether or not a follow-up license amendment is appropriate.

This revision of the Enforcement Policy eliminates the distinction between region-issued and NRR-issued NOEDs for power reactors. Although historically most NOEDs have been issued and documented by the cognizant regions without follow-up license amendments, all NOED requests have been evaluated and decisions made jointly by the regional and NRR staffs. Thus, the distinction is unnecessary.

The Enforcement Policy revision specifies that the associated regional and headquarters staff will together determine the appropriateness of granting a requested NOED. If the NOED is determined to be appropriate, regional staff will complete the documentation process associated with granting the NOED.

The revision provides that, for all power reactor NOED determinations, the Regional Administrator, or his or her designee, may issue a NOED after consultation with headquarters and therefore eliminates the need to categorize NOEDs as regional- or headquarters-lead. This clarification will provide a more predictable, clear, and consistent process for licensees when requesting NRC to consider granting a NOED.

This policy revision, as well as other NOED process improvements, was discussed with representatives of the Nuclear Energy Institute (NEI) and other stakeholders at a public meeting with the NRC staff on July 14, 2004. The NRC plans on completely revising and reissuing its Part 9900 guidance later in the year. In addition to the Enforcement Policy revision, other process improvements include emphasizing that the license amendment process should be used in preference to NOEDs whenever possible and developing improved guidance to address the NOED request requirement to demonstrate no net increase in radiological risk. In addition, other concurrent improvements to the NOED process will result in most NOEDs having follow-up license amendments regardless of the NOED duration.

The revision to the Enforcement Policy is strictly administrative in nature and will support simplification of the NOED process by providing a clear understanding of the roles and responsibilities of NRC regional and headquarters staff associated with issuance of NOEDs.