

RULEMAKING ISSUE

(Affirmation)

September 11, 2007

SECY-07-0158

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations /RA/

SUBJECT: FINAL RULE - CLARIFICATION OF NRC CIVIL PENALTY
AUTHORITY OVER CONTRACTORS AND SUBCONTRACTORS
WHO DISCRIMINATE AGAINST EMPLOYEES FOR ENGAGING
IN PROTECTED ACTIVITIES (RIN 3150-AH59)

PURPOSE:

To obtain Commission approval to publish in the *Federal Register* the enclosed final rule that amends the Commission's employee protection regulations in Title 10 of the Code of Federal Regulations (CFR) 30.7, 40.7, 50.7, 52.5¹, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7., to approve the Enforcement Policy Revision, and to certify the rule Satisfies the Regulatory Flexibility Act.

BACKGROUND:

10 CFR 30.7, 40.7, 50.7, 52.5, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10 and 76.7 set out the NRC's employee protection requirements. These regulations were promulgated by the Commission to prohibit a Commission licensee, applicant, contractor, or subcontractor of a licensee or applicant (or in 10 CFR 71.9 and 72.10, a holder of a Certificate of Compliance (CoC) and in

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¹ This final rule amends 10 CFR 52.5(c) to conform with the other employee protection regulations regarding civil penalties to contractors and subcontractors. 10 CFR 52.5(c) was not included in the proposed rule submitted to the Commission in SECY-05-0212 because, at that time, 10 CFR Part 52 did not contain employee protection provisions. 10 CFR Part 52 has since been amended (72 FR 49352, in part, to include a new section, 10 CFR 52.5, Employee protection.

10 CFR 76.7, the United States Enrichment Corporation) from discriminating against employees for engaging in protected activities. While the regulations were promulgated by the Commission to implement its authority to assess a civil penalty under Section 234 of the Atomic Energy Act for such violations, they do not explicitly provide for imposition of a civil penalty on a contractor or subcontractor. (In addition, 10 CFR 76.7(c) currently does not specify the availability of civil penalties as an enforcement action.)

In SECY-04-0195, Rulemaking Plan, "Clarification of NRC Civil Penalty Authority over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities (RM #636)," the staff recommended amending the employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 52.5, 60.9, 61.9, 63.9, 70.7, 71.9², 72.10 and 76.7 to allow the Commission to exercise its authority to impose civil penalties against contractors and subcontractors who violate these regulations. In a Staff Requirements Memorandum (SRM) dated November 22, 2004, the Commission approved the staff's rulemaking plan set forth in SECY-04-0195.

In SRM to SECY-05-0212, "Proposed Rulemaking - Clarification of NRC Civil Penalty Authority over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities," dated December 21, 2005, the Commission approved publication of a proposed rule to amend the employee protection regulations to exercise NRC's authority to impose civil penalties against contractors and subcontractors. The proposed rule was published in the *Federal Register* on January 31, 2006 (71 FR 5015).

DISCUSSION:

The *Federal Register* Notice gave the public an opportunity to comment on the proposed amendments, the draft environmental assessment, and the draft regulatory analysis. The comment period closed on April 17, 2006. The proposed rule was also sent to all Agreement States and was posted on the NRC's Rulemaking-RuleForum Web site. No comments were received from Agreement States during the public comment period on the proposed rule. The NRC received one email from a private citizen and one letter from Project on Government Oversight (POGO). In general, the comments were supportive of the proposed rule. These comments are discussed in detail in the *Federal Register* Notice (Enclosure 1) for the final rule. In addition, a public meeting was held on March 28, 2006, to discuss the proposed rule and to address any questions on the proposed rule. No major comments were received during the public meeting.

The proposed rule recommended amending the Commission's employee protection regulations to allow the Commission to impose civil penalties on contractors and subcontractors for violations of the requirements in these regulations. The proposed rule also recommended amending 10 CFR 76.7 to bring it into conformance with the provisions of other NRC employee protection regulations by providing that the Commission may impose a civil penalty on the United States Enrichment Corporation or a contractor or subcontractor of the United States Enrichment Corporation. The final rule contains the same requirements as the proposed rule.

² 10 CFR 71.9 was inadvertently omitted from the Rulemaking Plan submitted to the Commission in SECY-04-0195. For completeness, an amendment to 10 CFR 71.9 was added to the proposed rule and is also included in this final rule. The proposed rule and amendment were approved by the Commission in SRM-SECY-05-0212.

The Enforcement Policy is also being revised to clarify the Commission's civil authority over contractors and subcontractors.

AGREEMENT STATE ISSUES:

The revisions to 10 CFR 50.7, 52.5, 60.9, 63.9, 72.10, and 76.7 are not relevant to Agreement State programs because these NRC regulations address areas of exclusive NRC authority and are designated a Compatibility Category NRC. The revisions to 10 CFR 30.7, 40.7, 61.9, 70.7, and 71.9 are Compatibility Category D elements. Compatibility Category D elements are elements that do not need to be adopted by Agreement States.

In SRM-SECY-05-0212, the Commission, in approving publication of the proposed rule, directed that the Statement of Considerations should solicit comments from stakeholders regarding Category D designation of these regulations. In response to the solicitation for comments, the staff received one comment regarding compatibility category designation. The commenter recommended that 10 CFR 30.7, 40.7, 61.9, 70.7, and 71.9 be categorized at Compatibility Category C. Compatibility Category C elements are elements the essential objectives of which an Agreement State should adopt. In addition, this commenter stated that the NRC should issue a policy statement to Agreement States detailing the obligations under Category C. In response to the comment, the staff, in the enclosed *Federal Register* Notice for the final rule, stated that the Commission in SRM to SECY-99-002, "Agreement State Compatibility Designation for NRC Employee Protection Regulations," disapproved the staff's plans to designate 10 CFR 19.20, 30.7, 40.7, 61.9, and 70.7 as compatibility Category C for Agreement States. However, in that SRM the Commission provided direction to the staff that its decision could be revisited if the staff believed at some time in the future that there was a regulatory performance gap that put Agreement State licensee employees at a higher risk than NRC licensee employees as a result of the present compatibility category. The staff is currently reevaluating, under an initiative separate from this rulemaking, the effects of the Category D designation on Agreement State employees. Upon completion of that evaluation, the staff will determine whether additional actions are necessary regarding Agreement State employee protection compatibility categories. That evaluation and any subsequent staff recommendations to the Commission regarding compatibility categories are separate from this rulemaking and are not to be included in this rulemaking.

COMMITMENTS:

Listed below are the actions or activities committed to by the staff in this paper.

1. In an initiative separate from this rulemaking, the staff has started a major revision to the Enforcement Policy. Although changes have been made to the Enforcement Policy as a result of this rulemaking (Enclosure 4), during the ongoing major revision the staff will evaluate whether further revision of the Policy is necessary regarding civil penalties to contractors and subcontractors.
2. The staff will revise the NRC Enforcement Manual to incorporate guidance regarding civil penalties against contractors and subcontractors who violate the Commission's employee protection regulations. The Manual revision, in part, will include guidance on

how the base civil penalties in Table 1A of the Enforcement Policy will be extended to contractors and subcontractors.

RECOMMENDATIONS:

That the Commission:

1. Approve the final rule (Enclosure 1) for publication in the *Federal Register* .
2. Approve the Enforcement Policy Revision *Federal Register* Notice (Enclosure 4).
3. To satisfy the requirement of the Regulatory Flexibility Act, 5 U.S.C. 605(b), certify that this rule if promulgated will not have significant impact on a substantial number of small entities. This certification is included in the attached *Federal Register* Notice for the final rule.

Note that:

- a. This final rule 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, approval numbers 3150-0017, 3150-0020, 3150-0011, 3150-0127, 3150-0135, 3150-0199, 3150-0009, 3150-0008, 3150-0132 and 3150-0151.
- b. The final Environmental Assessment has been prepared for this rulemaking (Enclosure 2)
- c. The final Regulatory Analysis has been prepared for this rulemaking (Enclosure 3).
- 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 basis for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605(b).
- e. The staff has determined that this action is not a "major rule," as defined in the Congressional Review 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 Government Accountability Office contacts will be informed (Enclosure 5).
- f. The Office of Public Affairs will issue a press release when the final rulemaking is filed with the Office of the Federal Register.
- g. Appropriate Congressional Committees will be informed of this action.

RESOURCES:

Resources budgeted for this rulemaking were 0.4 full-time equivalents (FTE) in fiscal year (FY) 2007 (0.2 FTE in the Office of Enforcement, 0.1 FTE in the Office of Nuclear Material Safety and

Safeguards, and 0.1 FTE in the Office of Nuclear Reactor Regulations). These resources were included in the FY 2007 Budget.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Advisory Committee on Reactor Safeguards elected not to review the rulemaking requirements because the rulemaking involves a matter of policy that does not raise technical issues. The Committee to Review Generic Requirements waived review of this final rule because the rulemaking amendments do not include any provisions that would require backfits as defined in 10 CFR Chapter I.

/RA/

Luis A. Reyes
Executive Director
for Operations

Enclosures:

1. *Federal Register* Notice
2. Environmental Assessment
3. Regulatory Analysis
4. Enforcement Policy Revision
5. CRA Forms

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 52, 60, 61, 63, 70, 71, 72, and 76

RIN 3150-AH59

Clarification of NRC Civil Penalty Authority over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its employee protection regulations to clarify the Commission's authority to impose a civil penalty upon a non-licensee contractor or subcontractor of a Commission licensee, or applicant for a Commission license who violates the NRC's regulations by discriminating against employees for engaging in protected activity. The NRC is also amending its employee protection regulations related to the operation of Gaseous Diffusion Plants to conform with the NRC's other employee protection regulations and to allow the NRC to impose a civil penalty on the United States Enrichment Corporation (USEC or Corporation), as well as a contractor or subcontractor of USEC.

EFFECTIVE DATE: The effective date of this final rule is (insert 30 days after publication in the *Federal Register*).

FOR FURTHER INFORMATION CONTACT: Doug Starkey, Office of Enforcement, U.S.

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SUPPLEMENTARY INFORMATION:

Background

The Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 52.5¹, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7 prohibit discrimination by a Commission licensee, applicant for a Commission license, a holder of or applicant for a certificate of compliance (CoC) or the Corporation, or contractor or subcontractor of these entities, against employees for engaging in certain protected activities. These regulations identify certain enforcement actions for violations of the requirements. The enforcement actions are denial, revocation, or suspension of the license or certificate; imposition of a civil penalty on the licensee or applicant; or other enforcement action. While the employee protection regulations prohibit discrimination by a contractor or subcontractor, they do not explicitly provide for imposition of a civil penalty on a contractor or subcontractor.

On January 16, 1998, the NRC issued an enforcement action against Five Star Products, Inc., and Construction Products Research, Inc., contractors to the nuclear industry, for discriminating against one of its employees. Following this enforcement action, the NRC considered modifications to the NRC's employee protection regulations that would clearly allow the NRC, within the limits of its jurisdiction, to impose civil penalties on non-licensees for discriminating against employees who have engaged in protected activities. At the time that NRC took the enforcement action against Five Star Products, Inc., and Construction Products Research, Inc., the NRC was engaged in litigation with another non-licensee, Thermal

¹This final rule amends 10 CFR 52.5(c) to conform with the other employee protection regulations regarding civil penalties to contractors and subcontractors. 10 CFR 52.5(c) was not included in the proposed rule submitted to the Commission in SECY-05-0212 because, at that time, 10 CFR Part 52 did not contain employee protection provisions. 10 CFR Part 52 has since been amended (72 FR 49352, in part, to include a new section, 10 CFR 52.5, Employee protection.

Science, Inc., that included an issue concerning the scope of the Commission's civil penalty authority over non-licensees. Consequently, the NRC deferred modifying the NRC's employee protection regulations pending resolution of action in *Thermal Science, Inc., v. NRC* (Case No. 4:96CV02281-CAS). That case was subsequently settled.

On April 14, 2000, the NRC Executive Director for Operations (EDO) approved the establishment of a Discrimination Task Group (DTG) to, among other things, evaluate the NRC's handling of matters covered by its employee protection regulations. During this review, the DTG held 12 public meetings and provided the public with an opportunity to comment on its draft report. Among other recommendations, the DTG recommended in its report, "Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues," dated April 2002, that rulemaking be initiated to allow the NRC to impose civil penalties on contractors working for NRC licensees. The DTG received public comments both in favor of, and opposed to, the recommendation that NRC conduct a rulemaking to allow the imposition of civil penalties against contractors for violating the NRC's employee protection requirements.

The DTG's report was forwarded to the Commission as an attachment to SECY-02-0166, "Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues," dated September 12, 2002. On March 26, 2003, the Commission issued a Staff Requirements Memorandum (SRM) on SECY-02-0166, approving the recommendations of the DTG as revised by the Senior Management Review Team, subject to certain comments. The Senior Management Review Team was appointed by the EDO to review the final recommendations of the DTG and provide any additional perspectives that could enhance the potential options. The Commission approved, without comment, the DTG rulemaking recommendation regarding civil penalties against contractors.

The NRC staff submitted a proposed rule to amend the employee protection regulations to exercise NRC's authority to impose civil penalties against contractors and subcontractors to

the Commission on November 17, 2005 (SECY-05-0212). In SRM-SECY-05-0212, dated December 21, 2005, the Commission approved the staff's recommendation to publish the proposed rule, with certain changes directed by the Commission. The proposed rule was published in the *Federal Register* on January 31, 2006 (71 FR 5015). Public comment was requested on the proposed amendments as well as on the draft environmental assessment and regulatory analysis that had been prepared on the proposed rule. The final rule does not differ from the recommendations in the proposed rule.

Discussion

The amendments allow the Commission to impose civil penalties on contractors or subcontractors for violations of Commission employee protection requirements. The rule represents a significant change in Commission policy in that, currently, a licensee can receive a civil penalty for the discriminatory activities of its contractor or subcontractor, while the contractor or subcontractor is not subject to civil penalty enforcement action. The amendments clarify the NRC's authority to impose a civil penalty directly on contractors or subcontractors who violate the NRC's employee protection regulations. This authority derives from Section 234 of the Atomic Energy Act, which provides that the Commission may impose civil penalties on any person who violates any rule, regulation, or order issued under any of the enumerated provisions of the Act, or any term, condition, or limitation of any license or certification issued under the Act, or who commits a violation for which a license may be revoked. Section 11s of the Atomic Energy Act broadly defines the term "person" to include any individual, corporation, partnership, firm, association, trust, estate, public or private institution group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any

political subdivision of any such government or nation, or other entity; and any legal successor, representative, agent, or agency of the foregoing.

In 1991, the Commission amended its regulations to allow it to take enforcement action against unlicensed persons for deliberate misconduct (56 FR 40664; August 15, 1991). In so doing, the Commission emphasized that “any person” as defined in the Atomic Energy Act necessarily encompasses non-licensees, in order to effectuate the purposes of the Act as it applies to licensees. In that rulemaking, the Commission also noted that it may be able to exercise its Section 234 authority to impose civil penalties on unlicensed persons who deliberately cause a licensee to be in violation of requirements.

In 1998, the NRC issued a Severity Level I Notice of Violation without a civil penalty to Five Star Products, Inc. and Construction Products Research, Inc. in response to their discrimination against a former employee who raised safety concerns. Five Star Products, Inc. and Construction Products Research, Inc. were not licensees, but supplied safety-related basic components and services associated with those basic components to the nuclear industry at the time of the discrimination.²

It is important that contractors and subcontractors abide by the Commission’s employee protection regulations to effectuate the purposes of the Act because the activities of contractors and subcontractors can clearly affect the safe operation of a licensee’s facility. These amendments allow the Commission to impose civil penalties on any non-licensee employer that discriminates against an employee for engaging in protected activity, if that employer is a contractor or subcontractor of a licensee or the Corporation at the time that the employee engaged in the protected activity that resulted in discrimination. These amendments will serve

²In an earlier case, CLI-93-23, 38 NRC 169, 178-84 (1993), the Commission held that Five Star Products is a “contractor” and Construction Products Research, Inc., is a “subcontractor” within the meaning of Section 211 of the Energy Reorganization Act of 1974, as amended, and 10 CFR 50.7.

the dual objectives of deterring contractors and subcontractors from violating NRC's employee protection regulations and allowing employees to raise regulatory and safety concerns without fear of retaliation. Both of these objectives are critical to the nuclear industry's ability to carry out licensed activities safely.

However, the Commission emphasizes that the amendments do not affect its ability to impose civil penalties against licensees or applicants for discrimination, nor do they diminish the focus on licensee responsibility in the investigative and enforcement process. The Commission has long held licensees to be responsible for maintaining control and oversight of contractor and subcontractor activities. The modifications to the employee protection regulations do not indicate a change in Commission policy in this regard, nor do they diminish the ability of the NRC to impose civil penalties against licensees. There may be instances when the Commission may wish to issue civil penalties to the responsible contractor or subcontractor, or both, and the licensee. The Commission is maintaining its policy of emphasizing licensee responsibilities for the actions of their contractors and subcontractors. The Commission believes that these amendments are necessary and will offer additional enhancements to the regulatory process by allowing the Commission to exercise its authority to impose a significant enforcement action (i.e., civil penalty) directly on contractors or subcontractors who violate the NRC's employee protection regulations.

The NRC is not amending 10 CFR 71.9 and 72.10 to provide for imposing a civil penalty against a holder or applicant for a CoC, or contractor or subcontractor of a holder or applicant for a CoC. However, if a holder of, or applicant for, a CoC is also a contractor or subcontractor of a licensee or applicant for a license, then a civil penalty could be imposed on the holder of, or applicant for, a CoC in its capacity as a contractor or subcontractor.

In addition, in drafting the proposed rule, the NRC identified that 10 CFR 76.7 does not specify the availability of civil penalties as an enforcement action. The Supplementary

Information that accompanied the promulgation of 10 CFR 76.7 does not indicate that this omission was intentional.³ Therefore, the NRC is amending 10 CFR 76.7 to bring it into conformance with the provisions of the other NRC's employee protection regulations by providing that the Commission may impose a civil penalty on the Corporation or a contractor or subcontractor of the Corporation.

The NRC has also revised the authority citations to correctly reflect current statutory authority.

Comment Analysis

The period for submitting comments on the proposed rule, draft environmental assessment, or regulatory analysis expired on April 17, 2006. The NRC received an email from a private citizen and one letter from Project on Government Oversight (POGO). In general, the comments were supportive of the proposed rule. A summary of the issues raised by the commenters, followed by the NRC's responses to the comments, is provided below.

Comment summary. A commenter stated that it should be a rare exception and require Commission consultation before the NRC staff issues an enforcement action against a contractor without taking some enforcement action against the licensee. The commenter added that the Statement of Considerations in the final rulemaking should include a statement that consultation with the Commission will be required if the NRC staff issues enforcement action against a contractor without taking enforcement action against the licensee.

Response. The NRC disagrees with the recommendation that the Statement of Considerations for this final rule should include a statement that the Commission must be

³The Supplementary Information states that Part 76 is based upon comparable requirements; in particular, 10 CFR Part 70, as modified for the certification process. There is no indication that the omission of civil penalties was intended as such a modification (59 FR 48944; September 23, 1994).

consulted if the staff takes enforcement action against a contractor without taking some enforcement action against the licensee. The NRC position is that the circumstances surrounding each case of discrimination should be evaluated on a case-by-case basis, using the guidance in the Enforcement Policy and NRC Enforcement Manual, and that Commission consultation is not necessary. The reasons for not taking enforcement action against the licensee will be documented in correspondence to the licensee.

The NRC agrees that enforcement action will generally continue to be taken against a licensee for the discriminatory actions of its contractors or subcontractors. As previously stated, the modifications to the employee protection regulations do not affect the Commission's ability to impose civil penalties against licensees or applicants for discrimination, nor do they diminish the focus on licensee responsibility in the investigative and enforcement process. As further stated, the Commission has long held licensees to be responsible for maintaining control and oversight of contractor and subcontractor activities. The modifications to the employee protection regulations do not indicate a change in Commission policy in this regard or diminish the ability of the NRC to impose civil penalties against licensees.

Comment summary. One commenter stated that the proposed rule should apply to all licensees, applicants, contractors and subcontractors, including a holder or applicant for a Certificate of Compliance (CoC) under 10 CFR 71.9 and 72.10.

Response. The NRC is not amending 10 CFR 71.9 or 72.10 in this rulemaking to provide for imposing a civil penalty against a holder or applicant for a CoC. However, the Commission, in SRM-SECY-05-0212, "Proposed Rulemaking - Clarification of the NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities," directed the NRC staff (although as a low priority) to draft appropriate legislative language to be provided in any future legislative request to Congress for the extension of this rulemaking to cover those excluded certificate holders.

Comment summary. One commenter recommended that the proposed amendments to 10 CFR 30.7, 40.7, 61.9, 70.7, and 71.9 be categorized at the Agreement State Compatibility Category C designation (meets the essential objectives of NRC employee protection requirements) instead of as Agreement State Compatibility Category D (does not need to be adopted by Agreement States), as was proposed. In addition, this comment stated that the NRC should issue a policy statement to Agreement States detailing the obligations under Category C.

Response. The Commission in SRM-SECY-99-002, dated March 12, 1999, disapproved the staff's plans to designate 10 CFR 19.20, 30.7, 40.7, 61.9, and 70.7 as compatibility Category C for Agreement States. However, the Commission provided direction to the staff that its decision could be revisited if the staff believed at some time in the future that there was a regulatory performance gap that put Agreement State licensee employees at a higher risk than NRC licensee employees as a result of the present compatibility category. The NRC staff is currently reevaluating, under an initiative separate from this rulemaking, the effects of the Category D designation on Agreement State employees. Upon completion of that evaluation, the staff will determine whether additional actions are necessary regarding Agreement State employee protection compatibility categories. That evaluation and any subsequent staff recommendations to the Commission regarding compatibility categories are separate from this rulemaking and will not be included in this rulemaking. Therefore, the current compatibility Category D designation has not been changed in this final rule.

Section-by-Section Analysis of Substantive Changes

Sections 30.7, 40.7, 50.7, 52.5, 60.9, 61.9, 63.9, and 70.7, are amended to provide that, in addition to imposing a civil penalty against a Commission licensee or applicant for a Commission license, the Commission may impose a civil penalty against a contractor or

subcontractor of either of these entities for discriminating against an employee for engaging in protected activity.

Section 71.9 is amended to provide that, in addition to imposing a civil penalty against a Commission licensee, or applicant, the Commission may impose a civil penalty against a contractor or subcontractor of these entities for discriminating against an employee for engaging in protected activity.

Section 72.10 is amended to provide that, in addition to imposing a civil penalty against a Commission licensee or applicant, the Commission may impose a civil penalty against a contractor or subcontractor of the licensee, or applicant.

Section 76.7 is amended to provide that the Commission may impose a civil penalty on the Corporation or contractor or subcontractor of the Corporation.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" which became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into Compatibility Categories A, B, C, D, NRC or category Health and Safety (H&S). Category A includes program elements that are basic radiation protection standards or related definitions, signs, labels or terms necessary for a common understanding of radiation protection principles and should be essentially identical to those of the NRC. Category B includes program elements that have significant direct transboundary implications and should be essentially identical to those of the NRC. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Compatibility Category D are those program

elements that do not meet any of the criteria of Category A, B, or C, and do not need to be adopted by Agreement States. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States under the Atomic Energy Act, as amended, or provisions of Title 10 of the Code of Federal Regulations and cannot be adopted by Agreement States. Category H&S are program elements that are not required for compatibility, but have a particular health and safety role in the regulation of agreement material and the State and should contain the essential objectives of the NRC program elements.

The revisions to 10 CFR 50.7, 52.5, 60.9, 63.9, 72.10, and 76.7 are not relevant to Agreement State programs because these NRC regulations address areas of exclusive NRC authority and are designated a Compatibility Category NRC. The revisions to 10 CFR 30.7, 40.7, 61.9, 70.7, and 71.9 are categorized as Compatibility Category D, and therefore do not need to be adopted by Agreement States.

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC PDR is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Web site (Web). The NRC's interactive rulemaking web site is located at <http://ruleforum.llnl.gov>. These documents may be viewed and downloaded electronically via this Web site.

NRC's Agencywide Document Access and Management System (ADAMS). The NRC's PARS Library is located at <http://www.nrc.gov/readingrm/adams.html>.

| Document | PDR | Web | ADAMS |
|------------------------------------|-----|-----|----------------|
| Public Comment | X | X | ML060800443 |
| 56 FR 40664 | X | X | Not Applicable |
| Public Comment | X | X | ML060880346 |
| Final Rule--Regulatory Analysis | X | X | ML063110473 |
| Final Rule--Environmental Analysis | X | X | ML063110454 |
| Enforcement Policy Revision | X | X | ML063110480 |
| SECY-02-0166 | X | X | ML022120479 |
| SRM-SECY-02-0166 | X | X | ML030850783 |
| Proposed Rule FRN | X | X | ML060120312 |
| SECY-05-0212 | X | X | ML052910161 |
| SRM-SECY-05-0212 | X | X | ML053570177 |
| SRM-SECY-99-002 | X | X | ML003751577 |

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending its regulations to enable the Commission to impose civil penalties upon non-licensee contractors and subcontractors who discriminate against employees for engaging in certain protected activities. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, Public Law 97-190 (42 U.S.C. 4321 et seq.), as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, is not a major Federal action significantly affecting the quality of the human environment; and, therefore, an environmental impact statement is not required. The basis for this determination is that this rulemaking will not significantly increase the probability or consequences of accidents, no changes will be made in the types of effluents that may be released offsite, there will be no significant increase in public radiation exposure, nor will there be a direct nor reasonably foreseeable indirect effect on the water, land, or air.

The NRC requested the views of the States on the environmental assessment (EA). The EA, upon which the Commission's finding of no significant impact is based, is available for examination and copying at the NRC PDR, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. No comments were received on the EA. Single copies of the analysis may be obtained from the Office of Enforcement, U.S. Nuclear Regulatory Commission, at 301-415-3456 or by email at drs@nrc.gov.

Paperwork Reduction Act Statement

This final rule 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, approval numbers 3150-0017, 3150-0020, 3150-0011, 3150-0127, 3150-0135, 3150-0199, 3150-0009, 3150-0008, 3150-0132 and 3150-0151.

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.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examined the costs and benefits of the alternatives considered by the Commission. No comments were received on the regulatory analysis. The regulatory analysis is available for inspection in the NRC's PDR , 11555 Rockville Pike, Rockville, MD 20852. Single copies of the analysis may be obtained from the Office of Enforcement, U.S. Nuclear Regulatory Commission, at 301-415-3456 or by email at drs@nrc.gov.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities based on the definition of "small entities" set forth in the Regulatory Flexibility Act or the Size Standards established by the Nuclear Regulatory Commission (10 CFR 2.810). The provisions only impact contractors or subcontractors of licensees or applicants who violate the NRC's regulations by discriminating against employees who engage in protected activities.

Backfit Analysis

The Commission has determined that the backfit rule is not required for this final rule because these amendments do not include any provisions that would require backfits as defined in 10 CFR Chapter I.

Congressional Review Act

Under 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, Office of Management and Budget.

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 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 materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

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

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, 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

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

For the reasons set out 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 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR Parts 30, 40, 50, 52, 60, 61, 63, 70, 71, 72, and 76.

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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 30.7 is 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. In § 30.7, paragraph (c)(2) is revised to read as follows:

§ 30.7 Employee protection.

(c) ***

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for part 40 is revised 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); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 40.7 is 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).

4. In § 40.7, paragraph (c)(2) is revised to read as follows:

§ 40.7 Employee protection.

(c) ***

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for part 50 is revised 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 is 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. 955, 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).

6. In § 50.7, paragraph (c)(2) is revised to read as follows:

§ 50.7 Employee protection.

(c) ***

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

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

7. The authority citation for part 52 continues 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).

8. In § 52.5, paragraph (c)(3) is revised to read as follows:

§ 52.5 Employee protection.

(c) ***

(3) Imposition of a civil penalty on the licensee, holder of a standard design approval, or applicant (including an applicant for a standard design certification under this part following Commission adoption of final design certification rule) or a contractor or subcontractor of the licensee, holder of a standard design approval, or applicant.

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

9. The authority citation for part 60 is revised 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 60.9 is 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).

10. In § 60.9, paragraph (c)(2) is revised to read as follows:

§ 60.9 Employee protection.

(c) ***

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

PART 61 - LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

11. The authority citation for part 61 is a revised to 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 61.9 is 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).

12. In § 61.9, paragraph (c)(2) is revised to read as follows:

§ 61.9 Employee protection.

(c) ***

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

PART 63 - DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

13. The authority citation for part 63 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, 2238, as amended (42 U.S.C. 10134,

10141), and Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

14. In § 63.9, paragraph (c)(2) is revised to read as follows:

§ 63.9 Employee protection.

(c) ***

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant; or

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

15. The authority citation for part 70 is revised 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 (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). Sec. 193, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

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 is 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 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 70.81 also

issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

16. In § 70.7, paragraph (c)(2) is revised to read as follows:

§ 70.7 Employee protection.

(c) ***

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

PART 71 - PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

17. The authority citation for part 71 is revised to read 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 71.9 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 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

18. In § 71.9, paragraph (c)(2) is revised to read as follows:

§ 71.9 Employee protection.

(c) ***

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant; or

PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

19. 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. 2951, as amended by Pub. L. 102-485, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

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. 955 (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), 10161(h)). Subparts

K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

20. In § 72.10, paragraph (c)(2) is revised to read as follows:

§ 72.10 Employee protection.

(c) ***

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

PART 76 - CERTIFICATION OF GASEOUS DIFFUSION PLANTS

21. The authority citation for part 76 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321-349 (42 U.S.C. 2201, 2297b-11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(a)); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 76.7 is 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 76.22 is also issued under sec.193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(f)). Section 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

22. Section 76.7 is amended by revising paragraph (c)(2) and adding a new paragraph (c)(3) to read as follows:

§ 76.7 Employee protection.

(c) ***

(2) Imposition of a civil penalty on the Corporation or a contractor or subcontractor of the Corporation.

(3) Other enforcement action.

Dated at Rockville, Maryland, this day of , 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

UNITED STATES NUCLEAR REGULATORY COMMISSION
ENVIRONMENTAL ASSESSMENT
AND
FINDING OF NO SIGNIFICANT IMPACT
FOR THE FINAL RULE AMENDING
10 CFR PARTS 30, 40, 50, 52, 60, 61, 63, 70, 71, 72, and 76
CLARIFICATION OF NRC CIVIL PENALTY AUTHORITY OVER CONTRACTORS AND
SUBCONTRACTORS WHO DISCRIMINATE AGAINST EMPLOYEES FOR ENGAGING IN
PROTECTED ACTIVITIES
RIN 3150-AH59

ENVIRONMENTAL ASSESSMENT

Identification of the Proposed Action:

The proposed action is to amend the Nuclear Regulatory Commission's (NRC's) employee protection requirements in 10 CFR Parts 30, 40, 50, 52¹, 60, 61, 63, 70, 71, 72, and 76 to allow the Commission to impose civil penalties upon non-licensee contractors and subcontractors of a Commission licensee, or applicant for a Commission license, who violate the Commission's employee protection regulations by discriminating against employees for engaging in protected activities. In addition, 10 CFR Part 76 is being amended to make it consistent with the other NRC employee protection requirements and to provide that the Commission may impose a civil penalty on the United States Enrichment Corporation (USEC or

¹10 CFR 52.5(c) was not included in the Draft Environmental Assessment because, at that time, 10 CFR Part 52 did not contain employee protection provisions. 10 CFR Part 52 has since been amended (72 FR 49352, in part, to include a new section, 10 CFR 52.5, Employee protection. The final rule amends 10 CFR 52.5(c) to conform with the other employee protection regulations regarding civil penalties to contractors and subcontractors and therefore is included in this Environmental Assessment.

Corporation), as well as a contractor or subcontractor of USEC.

The Need for the Action:

The employee protection requirements in 10 CFR Parts 30, 40, 50, 52, 60, 61, 63, 70, 71, 72, and 76 prohibit Commission licensees, applicants for a Commission license, a holder of or an applicant for a Certificate of Compliance (CoC), USEC, or contractor or subcontractor of these entities from discriminating against their employees for engaging in protected activities. The NRC, to effectively fulfill its mandate, requires complete, factual, and current information concerning the regulated activities of its licensees. Employees of contractors and subcontractors and USEC are an important source of this information. The NRC's policy is to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to licensed activities. Although the employee protection regulations prohibit discrimination by a contractor or subcontractor, these regulations do not explicitly provide for imposition of a civil penalty on a contractor or subcontractor. The amendments clearly allow the NRC to impose a civil penalty on a contractor or a subcontractor of licensees, applicants, or USEC for violating the NRC's employee protection requirements.

Environmental Impacts of Action:

The amendments clarify that a civil penalty may be imposed on contractors, subcontractors, and USEC, for a violation of the NRC employee protection requirements. The actions that involve violations or subsequent enforcement of the employee protection requirements are procedural in nature and will not change the processes or manufacturing procedures relating to licensed activities, or alter the release of effluents to the environment. Therefore, clarifying that a civil penalty may be imposed on contractors or subcontractors of licensees, applicants for a license, USEC will change neither the permissible environmental

impacts from licensed activities, nor have a direct or reasonably foreseeable indirect effect on the water, land, or air.

The NRC staff has determined that an analysis under Section 7 of the Endangered Species Act is not required because the action is administrative and procedural in nature, and will not affect listed species or critical habitat. Likewise, the NRC staff has determined that the action is not the type of action that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

Environmental Impacts of the Alternatives to the Action:

As an alternative to the action, the NRC staff considered taking no action, which would leave the current regulations in place without change (i.e., the “no action alternative”). If the employee protection requirements are left unchanged, there would be no change in the current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. The alternative to the proposed action was rejected because it would not provide the additional deterrence to USEC or to contractors or subcontractors of USEC, licensees, or applicants who violate the NRC’s employee protection requirements that will be achieved by the proposed action. By deterring retaliation against employees engaging in protected activities, employees of USEC or contractors or subcontractors USEC, licensees, or applicants will be more likely to raise regulatory and safety concerns.

Alternative Use of Resources:

There are no irreversible commitments of resources determined in this assessment.

Agencies and Persons Consulted:

The NRC sent a copy of the draft environmental assessment and the proposed rule to every State Liaison Officer and requested their comments on the Environmental Assessment.

The NRC did not receive any comments on the draft environmental assessment.

Finding of No Significant Impact:

The Commission has determined that under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, the amendments are not a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The amendments establish a civil penalty as a possible sanction for contractors or subcontractors who violate the NRC employee protection requirements and make the employee protection requirements in 10 CFR Part 76 consistent with the other NRC employee protection requirements. The amendments are procedural in nature and have no significant impact on the environment.

The determination of this environmental assessment is that there will be no significant impact to the public from this action.

Regulatory Analysis for Final Rulemaking - Clarification of NRC Civil Penalty Authority over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities (RIN 3150-AH59)

1. Statement of the Problem and Objective

The regulations in 10 CFR 30.7, 40.7, 50.7, 52.5¹, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7 prohibit discrimination by a Commission licensee, or applicant for a Commission license, or holder of, or an applicant for, a Certificate of Compliance (CoC), or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in protected activities. Violation of these regulations may be grounds for enforcement actions that include denial, revocation, or suspension of the license or CoC; imposition of a civil penalty on the licensee or applicant; or other enforcement action. While the employee protection regulations prohibit discrimination by a non-licensee contractor or subcontractor, they do not explicitly provide for imposition of a civil penalty on a non-licensee contractor or subcontractor. The rule will clarify the Commission's authority to impose civil penalties against non-licensee contractors and subcontractors for violation of these regulations by discriminating against an employee for engaging in protected activities. Furthermore, this action supports the Commission's safety strategies in its FY 2004-2009 Strategic Plan to foster an environment in which safety issues can be openly identified without the fear of retribution.

In addition, the NRC is amending its regulations in 10 CFR 76.7 to provide that the Commission may impose a civil penalty on the United States Enrichment Corporation (USEC or Corporation) as well as a contractor or subcontractor of USEC. This change is to bring this regulation into conformance with the NRC's other employee protection regulations.

2. Identification of Regulatory Alternatives

This regulatory analysis evaluates the values and impacts of two regulatory alternatives. The following subsections describe these two alternatives.

2.1 No Action Alternative

The no action alternative retains the current regulations described above. Non-licensee contractors and subcontractors who violate these regulations by discriminating against an employee for engaging in protected activities would not be considered for imposition of civil penalties by the Commission. The no action alternative serves as the baseline against which the proposed rule alternative (described below) is measured.

2.2 Rule Alternative

Under the rule alternative, the NRC will revise its regulations for employee protection in 10 CFR

¹10 CFR 52.5(c) was not included in the Draft Regulatory Analysis because, at that time, 10 CFR Part 52 did not contain employee protection provisions. 10 CFR Part 52 has since been amended (72 FR 49352, in part, to include a new section, 10 CFR 52.5, Employee protection. The final rule amends 10 CFR 52.5(c) to conform with the other employee protection regulations regarding civil penalties to contractors and subcontractors and therefore is included in this Regulatory Analysis.

30.7, 40.7, 50.7, 52.5, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10 and 76.7 to clarify the Commission's authority to impose civil penalties against non-licensee contractors and subcontractors who violate these regulations by discriminating against an employee for engaging in protected activities. Additionally, the rule alternative will revise the regulations in 10 CFR 76.7 to provide that the Commission may impose a civil penalty on USEC, as well as a contractor or subcontractor of USEC. This change will bring this regulation into conformance with the NRC's other employee protection regulations.

3. Analysis of Values and Impacts

The three subsections below describe the analysis conducted to identify and evaluate the values and impacts resulting from the final rule. Subsection 3.1 identifies the attributes that the rule is expected to affect. Subsection 3.2 describes the methodology used to analyze the values and impacts associated with the rule.

3.1 Identification of Affected Attributes

The attributes that the rule could affect were identified using the list of potential attributes provided in Chapter 5 of NUREG/BR-0184, "Regulatory Analysis Technical Evaluation Handbook," dated January 1997. Each attribute listed in Chapter 5 was evaluated. Because the baseline for this analysis assumes full compliance with existing requirements, only three attributes (NRC implementation, regulatory efficiency and other considerations) were affected under the rule.

- *NRC Implementation.* The NRC will incur costs to place the final rule into operation. This will include costs incurred to (1) revise related policy and guidance documents, (2) develop a training course on changes to the employee protection regulations and (3) train NRC staff who need to enforce the regulations.
- *Regulatory Efficiency.* The final rule will enhance regulatory efficiency by clarifying in the regulations in 10 CFR 30.7, 40.7, 50.7, 52.5, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7 that the Commission may also impose a civil penalty on a non-licensee contractor or subcontractor of a licensee or applicant for violating these regulations. In addition, conforming changes are made to 10 CFR 76.7 to specify the availability of civil penalties as an enforcement action against USEC as well as a contractor or subcontractor of USEC.
- *Other Considerations.* The final rule could increase public and employee confidence in the NRC and NRC licensees and applicants and non-licensee contractors and subcontractors because of a more systematic approach to imposing civil penalties for violation of the employee protection regulations. Also, the direct imposition of civil penalties on contractors and subcontractors will deter contractors and subcontractors from violating the Commission's employee protection regulations and allow their employees to raise regulatory and safety concerns without fear of retaliation. Thus, the final rule makes the workplace safer and adds to the protection of public health and safety.

The final rule is not expected to affect the following attributes:

- Public Health (Accident)
- Public Health (Routine)
- Occupational Health (Accident)
- Occupational Health (Routine)
- Offsite Property
- Onsite Property
- Industry Implementation
- Industry Operation
- NRC Operation
- Other Government
- General Public
- Improvements in Knowledge
- Antitrust Considerations
- Safeguards and Security Considerations
- Environmental Considerations

3.2 Analysis of Values

Regulatory Efficiency. The final rule represents a significant change in the Commission's current policy under which a licensee can receive a civil penalty for a non-licensee contractor or subcontractor discriminatory activities while the contractor or subcontractor is not subject to civil penalty enforcement action. The amendments will enhance regulatory efficiency by allowing the Commission to exercise its authority to impose a civil penalty (i.e., a significant enforcement action) on contractors or subcontractors who violate the NRC's employee protection regulations. This could reduce the financial and regulatory burden that can unnecessarily be placed on a licensee or applicant because of a non-licensee contractor or subcontractor who violates the employee protection regulations.

The NRC is also amending its regulations in 10 CFR 76.7 to specify that the Commission may impose a civil penalty on USEC as well as a contractor or subcontractor of USEC. This change will bring this regulation into conformance with the NRC's other employee protection regulations and enhance regulatory efficiency.

Other Considerations. Because the activities of contractors and subcontractors can clearly affect the safe operation of a licensee's facility, it is important that contractors and subcontractors abide by the Commission's employee protection regulations. Under the rule, the Commission will be able to bring the full scope of enforcement actions to bear on contractors or subcontractors who violate its regulations.

Although licensees are responsible for the actions of their contractors, in some circumstances it may not serve as a desired deterrent to hold the licensee responsible for the actions of its contractors, especially in situations when the licensee takes prompt and comprehensive action to remedy the situation. The rule could also increase public confidence in the NRC and NRC licensees, and applicants and non-licensee contractors and subcontractors, because there will be a more systematic approach to imposing civil penalties when employee protection regulations are violated.

The direct imposition of civil penalties on non-license contractors and subcontractors will deter contractors and subcontractors from violating the Commission's employee protection regulations and allow their employees to raise regulatory and safety concerns without fear of retaliation. Both of these objectives are critical to the nuclear industry's ability to carry out licensed activities safely.

3.3 Analysis of Impacts

NRC Implementation. Implementation of the final rule will require minor conforming revisions to the NRC Enforcement Policy and the NRC Enforcement Manual. The NRC staff estimates that revising these documents will require about 40 staff-hours. Assuming a conversion factor of \$105 per staff-hour, the estimated cost to revise these documents is \$4,200 (40 hours x \$105/hour). The NRC will also incur costs to develop a training course to provide training to NRC staff on changes to the employee protection regulations. Assuming it takes 16 staff-hours to develop the training course, the estimated cost is \$1,680 (16 hours x \$105/hour). The cost to train 10 people for two hours, plus the instructor's time of two hours, is estimated to be \$2,310 ((10 x 2 hours x \$105/hour) + (2 hours x \$105/hour)).

The total NRC-staff resources needed to implement the final rule are estimated to be \$8,200 (0.05 FTE, based on 1,466 hours/FTE). This estimate has increased from the estimate stated in the proposed rule due to a recalculation of the NRC hourly staff-rates using more recent data.

4. Results and Decision Rationale

As shown above, the total cost to the NRC to implement the final rule is estimated to be \$8,200. The NRC expects that there will be no other significant costs associated with this action to the NRC, licensees and applicants, or non-licensee contractors or subcontractors.

The final rule will improve the effectiveness of NRC regulations by clarifying that violation of the employee protection regulations by non-licensee contractors and subcontractors may be grounds for imposition of a civil penalty on a non-licensee contractor or subcontractor. In addition, the final rule brings 10 CFR 76.7 into conformance with the NRC's other employee protection regulations by amending this regulation to provide that the Commission may impose a civil penalty on the Corporation as well as a contractor or subcontractor of the Corporation.

The amendments do not affect the Commission's ability to impose civil penalties against licensees or applicants for discrimination by their contractors or subcontractors against employees for engaging in protected activities, nor do they diminish the focus on licensee responsibility in the investigative and enforcement process. The Commission has long held licensees to be responsible for maintaining control and oversight of contractor and subcontractor activities. There may be instances in which the Commission may wish to issue civil penalties to both the responsible contractor and the licensee; for example, in cases when there are employee protection violations involving both licensee and contractor culpability or situations when the licensee is aware of discrimination by its contractor and does not take immediate action to remedy the situation.

The final rule is consistent with NRC's strategic objective and performance goals. The final rule will continue to ensure the protection of public health and safety and the environment, as well as provide that the Commission may impose a civil penalty on contractors or subcontractors

discriminating against an employee for engaging in protected activities. The ability to impose a significant enforcement action (i.e., civil penalty) directly on non-licensee contractors and subcontractors will result in the Commission's regulations being more effective and efficient.

5. Implementation

The final rule will become effective 30 days after its publication in the *Federal Register*. No impediments to the implementation of the recommended alternative have been identified.

NUCLEAR REGULATORY COMMISSION

Imposition of Civil Penalty on Contractors and Subcontractors
Who Discriminate Against Employees for Engaging in Protected Activities

AGENCY: Nuclear Regulatory Commission

ACTION: Policy Statement: Revision

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its Enforcement Policy to include contractors and subcontractors of a licensee against whom the Commission may impose a civil penalty for discriminating against employees for engaging in protected activities.

EFFECTIVE DATES: This action is effective **[insert 30 days from date of publication in the *Federal Register*]** publication in the *Federal Register*. Comments on this revision should be submitted by **[insert 30 days from effective date]**. The Commission will apply the modified Policy to violations that occur after the effective date.

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, MD 20852, 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 20852. You may also e-mail comments to nrcprep@nrc.gov.

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

FOR FURTHER INFORMATION CONTACT: Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; Telephone (301) 415-3456; e-mail drs@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Commission amended 10 CFR 30.7, 40.7, 50.7, 52.5, 60.7, 61.9, 63.9, 70.7, 71.9, 72.10 and 76.7 to clarify the Commission’s authority to impose civil penalties on contractors and subcontractors for violations of Commission employee protection requirements. The changes to the Enforcement Policy hereunder incorporate the recent clarifying revisions set forth in the referenced employee protection regulations.

Paperwork Reduction Act

This final change to the NRC Enforcement Policy does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

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.

Accordingly, the NRC Enforcement Policy is amended to read as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

* * * * *

I. INTRODUCTION AND PURPOSE

* * * * *

Footnote 1

This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. However, this policy provides for taking enforcement action against non-licensees and individuals in certain cases. 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 VII, VIII and X.

* * * * *

VI. ENFORCEMENT ACTIONS

* * * * *

C. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee, contractor, subcontractor or other person and other licensees, contractors, subcontractors or other persons, conducting similar activities. Civil penalties also emphasize the need for licensees, contractors, subcontractors and other persons to identify violations and take prompt comprehensive corrective action.

* * * * *

VII. EXERCISE OF DISCRETION

* * * * *

B. Mitigation of Enforcement Sanctions

* * * * *

5. Violations Involving Certain Discrimination Issues

Enforcement discretion may be exercised for discrimination cases when a licensee (including a contractor or subcontractor) who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (e.g., by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II

violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

Generally, the NRC holds licensees responsible for maintaining control and oversight of their contractor and subcontractor activities. As such, in cases involving licensee contractors and subcontractors, the NRC will typically take enforcement action against a licensee for violations arising out of the acts of its contractor or subcontractor. In addition, enforcement action (including a civil penalty) may be taken against the licensee contractor or subcontractor. On occasion, however, circumstances may arise where the NRC may refrain from taking enforcement action or imposing a civil penalty against a licensee even though it takes enforcement action or issues a civil penalty, against the licensee contractor or subcontractor.

* * * * *

Dated at Rockville, Maryland, this _____ day of _____, 2007.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission

Submission of Federal Rules Under the Congressional Review Act

 President of the Senate

 Speaker of the House of Representatives

 GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency

U.S. Nuclear Regulatory Commission

2. Subdivision or Office

Office of Enforcement

3. Rule Title

Clarification of NRC Civil Penalty Authority over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities

4. Regulation Identifier Number (RIN) or Other Unique Identifier (if applicable)

RIN 3150-AH59

5. Major Rule Non-major Rule

6. Final Rule Other

7. With respect to this rule, did your agency solicit public comments?

Yes No NA

8. Priority of Regulation (fill in one)

Economically Significant; or
Significant; or
Substantive, Non Significant

Routine and Frequent or
Informational/Administrative/Other
(Do not complete the other side of this form
if filled in above.)

9. Effective Date (if applicable)

30 days after publication in Federal Register

10. Concise Summary of Rule (fill in one or both)

attached stated in rule

Submitted by: _____ (signature)

Name: **Rebecca L. Schmidt**

Title: **Director, Office of Congressional Affairs**

For Congressional Use Only:

Date Received: _____

Committee of Jurisdiction: _____



24722

| | Yes | No | N/A |
|--|----------------------------------|----------------------------------|----------------------------------|
| A. With respect to this rule, did your agency prepare an analysis of costs and benefits? | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| B. With respect to this rule, by the final rulemaking stage, did your agency | | | |
| 1. certify that the rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b)? | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)? | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995? | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)? | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
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| F. Did you discuss any of the following in the preamble to the rule? | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| • E.O. 12612, Federalism | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| • E.O. 126630, Government Actions and Interference with Constitutionally Protected Property Rights | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
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| • E.O. 12875, Enhancing the Intergovernmental Partnership | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
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| • Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify) | | | |
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| <u>Small Business Regulatory Enforcement Fairness Act of 1996</u> | | | |

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N/A

5. Major Rule Non-major Rule

6. Final Rule Other **Revision to Enforcement Policy**

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| 1. Name of Department or Agency U.S. Nuclear Regulatory Commission | 2. Subdivision or Office Office of Enforcement |
|--|--|

3. Rule Title
Imposition of Civil Penalty on Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities

4. Regulation Identifier Number (RIN) or Other Unique Identifier (if applicable)
N/A

5. Major Rule Non-major Rule

6. Final Rule Other **Revision to Enforcement Policy**

7. With respect to this rule, did your agency solicit public comments? Yes No N/A

8. Priority of Regulation (fill in one)
 Economically Significant; or Significant; or Substantive, Non Significant
 Routine and Frequent or Informational/Administrative/Other (Do not complete the other side of this form if filled in above.)

9. Effective Date (if applicable) **30 days after publication in Federal Register**

10. Concise Summary of Rule (fill in one or both) attached stated in rule

Submitted by: _____ (signature)

Name: **Rebecca L. Schmidt**

Title: **Director, Office of Congressional Affairs**

For Congressional Use Only:

Date Received: _____

Committee of Jurisdiction: _____



24722

| | Yes | No | N/A |
|---|-----------------------|----------------------------------|----------------------------------|
| A. With respect to this rule, did your agency prepare an analysis of costs and benefits? | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| B. With respect to this rule, by the final rulemaking stage, did your agency | | | |
| 1. certify that the rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b)? | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| 2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)? | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995? | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Actg (NEPA)? | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995? | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| F. Did you discuss any of the following in the preamble to the rule? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| • E.O. 12612, Federalism | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| • E.O. 126630, Government Actions and Interference with Constitutionally Protected Property Rights | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| • E.O. 12866, Regulatory Planning and Review | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| • E.O. 12875, Enhancing the Intergovernmental Partnership | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| • E.O. 12988, Civil Justice Reform | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| • E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| • Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify) | | | |
| _____ | | | |
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24722

Submission of Federal Rules Under the Congressional Review Act

President of the Senate

Speaker of the House of Representatives

GAO

Please fill the circles electronically or with black pen or #2 pencil.

| | |
|--|--|
| 1. Name of Department or Agency U.S. Nuclear Regulatory Commission | 2. Subdivision or Office Office of Enforcement |
| 3. Rule Title Imposition of Civil Penalty on Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities | |
| 4. Regulation Identifier Number (RIN) or Other Unique Identifier (if applicable) N/A | |
| 5. Major Rule <input type="radio"/> Non-major Rule <input checked="" type="radio"/> | |
| 6. Final Rule <input type="radio"/> Other <input checked="" type="radio"/> Revision to Enforcement Policy | |
| 7. With respect to this rule, did your agency solicit public comments? Yes <input type="radio"/> No <input checked="" type="radio"/> N/A <input type="radio"/> | |
| 8. Priority of Regulation (fill in one) <input checked="" type="radio"/> Economically Significant; or Significant; or Substantive, Non Significant <input type="radio"/> Routine and Frequent or Informational/Administrative/Other <small>(Do not complete the other side of this form if filled in above.)</small> | |
| 9. Effective Date (if applicable) 30 days after publication in Federal Register | |
| 10. Concise Summary of Rule (fill in one or both) attached <input type="radio"/> stated in rule <input checked="" type="radio"/> | |

Submitted by: _____ (signature)

Name: **Rebecca L. Schmidt**

Title: **Director, Office of Congressional Affairs**

For Congressional Use Only:

Date Received: _____

Committee of Jurisdiction: _____



24722

| | Yes | No | N/A |
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| B. With respect to this rule, by the final rulemaking stage, did your agency | | | |
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