

# RULEMAKING ISSUE

## (Notation Vote)

November 17, 2005

SECY-05-0212

FOR: The Commissioners

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

SUBJECT: PROPOSED RULEMAKING - 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* a proposed rule to amend the Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7.<sup>1</sup>

### BACKGROUND:

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, 60.9, 61.9, 63.9, 70.7, 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 an Staff Requirements Memoranda (SRM) dated November 22, 2004, the Commission approved the staff's rulemaking plan set forth in SECY-04-0195.

CONTACT: Doug Starkey, OE  
301-415-3456

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<sup>1</sup>The changes proposed by this rulemaking are not related to the Energy Policy Act of 2005, Section 629, Whistleblower Protection.

DISCUSSION:

10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, 70.7, 71.9<sup>2</sup>, 72.10, and 76.7 set out NRC's employee protection requirements. The following provides a brief outline of paragraphs (a) through (f) of 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7. Paragraph (a) prohibits a Commission licensee, applicant, contractor or subcontractor of a licensee or applicant, (or in 71.9 and 72.10, a holder of a Certificate of Compliance (CoC) and in 76.7, the United States Enrichment Corporation, "the Corporation"), from discriminating against employees for engaging in protected activities and defines the protected activities. Paragraph (b) explains that employees have a personal remedy for such discrimination through the Department of Labor (DOL). Paragraph (c) states that discrimination may be grounds for denial, revocation, or suspension of the license (or in 71.9, 72.10 and 76.7, suspension of the certificate), imposition of a civil penalty<sup>3</sup> on the licensee or applicant, or other enforcement action. Paragraph (d) explains that adverse actions may also be legitimately taken by an employer. Paragraph (e) mandates posting of NRC Form 3 by licensees, certificate holders, applicants for licenses or CoCs and the Corporation. Paragraph (f) prohibits agreements affecting the compensation, terms, conditions, or privileges of employment.

These 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. However, while paragraph (a) prohibits discrimination by a contractor or subcontractor, paragraph (c) does not explicitly provide for the 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. The Supplementary Information that accompanied the promulgation of 10 CFR 76.7 does not indicate that this omission was intentional; in fact, there is an indication that the intent was that the provisions of this section should be the same as the provisions of the other employee protection regulations.

The Rulemaking Plan submitted to the Commission in SECY-04-0195, indicated that 10 CFR 72.10 would be amended to provide imposing a civil penalty against a holder or applicant for a CoC or a contractor or subcontractor of a holder or applicant for a CoC. However, the staff is not proposing to amend 71.9 or 72.10 to provide 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 a CoC is also a contractor or subcontractor of a licensee, then a civil penalty could be imposed on a contractor or subcontractor in that capacity.

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<sup>2</sup>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 is added to this proposed rule.

<sup>3</sup>10 CFR 76.7(c) currently does not specify the availability of civil penalties as an enforcement action. The proposed rule will amend 10 CFR 76.7 to conform with the other employee protection regulations.

### Proposed Rule

The Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 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, contractor or subcontractor, a holder of or applicant for a CoC or the Corporation against employees for engaging in certain protected activities. These sections identify certain enforcement actions for violations of the regulations. 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. 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. The Commission should be able to bring the full scope of enforcement actions to bear on contractors or subcontractors who violate its employee protection regulations. The approach described in the attached proposed rule represents a significant change in the Commission's current policy: currently, a licensee can receive a civil penalty when its contractor or subcontractor violates the Commission's employee protection regulations, but the contractor or subcontractor is not subject to civil penalties.

The proposed rulemaking will enhance the regulatory process by enabling the Commission to exercise its authority to impose civil penalties directly on contractors or subcontractors who violate the Commission's employee protection regulations. By implementing its authority to impose civil penalties on contractors and subcontractors of a licensee, applicant for a license, or the Corporation who discriminate against employees who engage in protected activity, the Commission will further its efforts to foster an environment in which safety issues can be openly identified without fear of retribution. This supports the following safety strategies: (1) developing, maintaining, and implementing licensing and regulatory programs for reactors, fuel facilities, materials users, spent fuel management, decommissioning sites, and waste-related activities to protect public health, safety, and the environment and (2) conducting NRC safety oversight programs, including inspections and enforcement activities to monitor licensee performance by improving the framework used to deter discrimination by non-licensees.

### Enforcement Considerations

To fully implement the Commission-approved final rule, the staff will revise the NRC Enforcement Policy and the NRC Enforcement Manual.

### Contents of the Proposed-Rulemaking Package

This rulemaking package provides a comprehensive set of documents for Commission consideration. It consists of the *Federal Register* Notice (Attachment 1), the draft Environmental Assessment (Attachment 2), and the draft Regulatory Analysis (Attachment 3).

RESOURCES:

The resources estimated to complete this rulemaking and the associated training and support and guidance documents are 1.2 full-time equivalent (FTE) positions (0.8 FTE in the Office of Enforcement and 0.4 FTE in other offices) over FY 2006-2007. This estimate is based on completion of the rulemaking early in FY 2007. The budget includes sufficient resources to complete the rulemaking in FY 2006 and FY 2007. The information on resources and schedule reflect the current environment and if a significant amount of time (greater than 30 days) passes or the Commission provides the staff direction that differs from or adds to the staff's recommended action(s), this section of the paper would need to be reconsidered after issuance of the draft SRM.

COMMITMENTS:

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

- The staff will revise the NRC Enforcement Policy to incorporate the changes to the employee protection regulations
- The staff will revise the NRC Enforcement Manual to incorporate the changes to the employee protection regulations
- The staff will hold a public meeting to provide stakeholders the opportunity to comment on the proposed rule.

AGREEMENT STATE ISSUES

The revisions to 10 CFR 50.7, 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. Agreement States will be offered the opportunity to comment on the proposed rule during the 75 public comment period.

RECOMMENDATIONS:

That the Commission:

1. *Approve* the proposed rule for publication.
2. *Certify* that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities. This action is needed to satisfy the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).
3. Notes:
  - a. The proposed rule will be published in the *Federal Register*, allowing 75 days for public comment.

- b. 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.
- c. A draft Environmental Assessment and finding of no significant impact has been prepared (Attachment 2)
- d. A draft Regulatory Analysis has been prepared for this rulemaking (Attachment 3)
- e. A public announcement will be issued.
- f. Appropriate Congressional Committees will be informed of this action.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objections. The Advisory Committee on Reactor Safeguards elected not to review the proposed rule requirements because the proposed rulemaking involves a matter of policy that does not raise technical issues. The Committee to Review Generic Requirements has deferred its review of the rule until after the public comment period has ended and the staff has considered any public comments received.

***/RA W Kane Acting for/***

Luis A. Reyes  
Executive Director  
for Operations

Attachments:

1. *Federal Register* Notice
2. Draft Environmental Assessment
3. Draft Regulatory Analysis

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 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: Proposed Rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is proposing to amend 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 proposing to amend 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.

DATES: The comment period expires (INSERT DATE 75 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER). Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150-AH59 in the subject line of your comments. Comments on rulemakings submitted in writing or electronic form will be made available for public

inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking website to Carol Gallagher (301) 415-5905; email [cag@nrc.gov](mailto:cag@nrc.gov).

Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays. (Telephone (301) 415-1966).

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

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public

Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

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](mailto:drs@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 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 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 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 Executive Director of Operations 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.

## Discussion

The proposed amendments would allow the Commission to impose civil penalties on contractors or subcontractors for violations of Commission employee protection requirements. The proposed 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 proposed amendments would 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 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.<sup>1</sup>

The activities of contractors and subcontractors can clearly affect the safe operation of a licensee's facility so that it is important that contractors and subcontractors abide by the Commission's employee protection regulations to effectuate the purposes of the Act. These amendments would 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 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 proposed 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 proposed modifications to the employee protection regulations do not indicate a change in Commission policy in this regard, nor do they diminish

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<sup>1</sup>In an earlier case, 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 ERA and 10 CFR 50.7.

the ability of the NRC to impose civil penalties against licensees. There may be instances in which the Commission may wish to issue civil penalties to the responsible contractor or subcontractor, or both, and the licensee; for example, in cases where there are employee protection violations involving both licensee and contractor culpability or situations in which the licensee is aware of discrimination by its contractor or subcontractor and does not take immediate action to remedy the situation. Although 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 enhance 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 proposing to amend 71.9 and 72.10 to provide 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 CoC is also a contractor or subcontractor of a licensee, then a civil penalty could be imposed on a contractor or subcontractor in that capacity.

In addition, in drafting this 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.<sup>2</sup> Therefore, the NRC is proposing to amend 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.

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<sup>2</sup>The 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).

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

#### Proposed Changes to the NRC's Regulations

Sections 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, and 70.7, would be 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 would be 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 would be 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 would be amended to provide that the Commission may impose a civil penalty on the Corporation or contractor or subcontractor of the Corporation.

#### Agreement State Comments on Proposed Rulemaking Plan

On June 18, 2004, the NRC provided the proposed Rulemaking Plan to the Agreement States for a 45 day comment period, which closed on August 2, 2004. One comment was received. The comment stated:

The addition of civil penalties, for contractors and subcontractors who discriminate against employees as referenced, appears appropriate. The

final wording of this amendment should clearly express that the licensee is still responsible for maintaining control and oversight of contractor and subcontractor activities, and the licensee has a responsibility to investigate and, if necessary, institute enforcement actions against contractors and subcontractors when claims are brought by their employees. The wording must be expanded to ensure that licensees follow through on their responsibility to maintain control and oversight of contractor and subcontractor activities.

The NRC position is that it is beyond the scope of the proposed amendments to include wording in the amendments to address the licensee's responsibility for oversight of contractors and subcontractors. However, as previously stated in this document, the proposed amendments do not diminish the focus on licensee responsibility for the conduct of its contractors and subcontractors in the area of employee protection.

#### 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 Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

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

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

Document	PDR	Web	ADAMS
Proposed Rule--Draft Regulatory Analysis	X	X	ML051950431
Proposed Rule--Draft Environmental Analysis	X	X	ML051950438
SECY-02-0166	X	X	ML022120479
SRM in SECY-02-0166	X	X	ML030850783
SECY-04-0195, Rulemaking Plan	X	X	ML042740294

#### 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. The proposed rule would 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.

#### 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 pursuant to the Atomic Energy Act, as amended, or provisions of Title 10 of the Code of Federal Regulations and can not 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, 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.

#### Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language



used. Comments should be sent to the address listed under the ADDRESSES caption of the preamble.

#### 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, if adopted, would not be 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 would not significantly increase the probability or consequences of accidents, no changes would be made in the types of effluents that may be released offsite, there would be no significant increase in public radiation exposure, nor would there be a direct nor reasonably foreseeable indirect effect on the water, land, or air.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the ADDRESSES heading.

The environmental assessment is available for inspection in the NRC Public Document Room, 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 e-mail at [drs@nrc.gov](mailto:drs@nrc.gov).

### Paperwork Reduction Act Statement

This proposed 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 and 3150-0132.

### 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 draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is available for inspection in the NRC Public Document Room, 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 e-mail at [drs@nrc.gov](mailto:drs@nrc.gov). The Commission requests public comment on the regulatory analysis. Comments on the analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this proposed rule will not, if promulgated, 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 proposed provisions would only impact contractors or subcontractors 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 does not apply to this proposed rule because these amendments would not involve any provision that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required for this proposed rule.

#### 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 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 record keeping 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. 553;

the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 40, 50, 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 amended 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 amended 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 60 - DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

7. The authority citation for Part 60 is amended 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).

8. 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

9. The authority citation for Part 61 is amended 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).

10. 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

11. 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).

12. 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.

\*\*\*\*\*

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

13. The authority citation for Part 70 is amended 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).

14. 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

15. The authority citation for Part 71 is amended 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.

16. 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, certificate holder, applicant, or a contractor or subcontractor of the licensee, certificate holder or applicant.

\*\*\*\*\*

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

17. 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).

18. 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.

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PART 76 - CERTIFICATION OF GASEOUS DIFFUSION PLANTS

19. The authority citation for Part 76 is amended 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).

20. 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.

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Dated at Rockville, Maryland, this        day of        , 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,  
Executive Director for Operations.

UNITED STATES NUCLEAR REGULATORY COMMISSION  
DRAFT ENVIRONMENTAL ASSESSMENT  
AND  
FINDING OF NO SIGNIFICANT IMPACT  
FOR AN AMENDMENT TO  
10 CFR PARTS 30, 40, 50, 60, 61, 63, 70, 71, 72, and 76  
EMPLOYEE PROTECTION REGULATIONS:  
CLARIFICATION OF NRC CIVIL PENALTY AUTHORITY  
RIN 3150-AH59

The U.S. Nuclear Regulatory Commission (NRC) is evaluating the environmental impacts of an amendment to its regulations in 10 CFR Parts 30, 40, 50, 60, 61, 63, 70, 71, 72, and 76. Therefore, as required by 10 CFR 51.21, the NRC is performing this environmental assessment review and documenting its finding of no significant impact.

ENVIRONMENTAL ASSESSMENT

Identification of the Proposed Action:

The proposed action would amend the NRC's employee protection requirements in 10 CFR Parts 30, 40, 50, 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, to provide that the Commission may impose a civil penalty on the



United States Enrichment Corporation (Corporation), as well as a contractor or subcontractor of the Corporation.

The Need for the Proposed Action:

The employee protection requirements in 10 CFR Parts 30, 40, 50, 60, 61, 63, 70, 71, 72, and 76 prohibit Commission licensees, applicants for a Commission license, holder of or applicant for a Certificate of Compliance (CoC), the Corporation, 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 the United States Enrichment Corporation are an important source of such 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 proposed amendments would clearly allow the NRC to impose a civil penalty on a contractor or a subcontractor of licensees, applicants, or the United States Enrichment Corporation for violating the NRC's employee protection requirements.

Environmental Impacts of Proposed Action:

The proposed amendments would clarify that a civil penalty may be imposed on contractors, subcontractors, and the United States Enrichment Corporation, for a violation of the NRC employee protection requirements. The actions that would involve violations or subsequent enforcement of the employee protection requirements are procedural in nature and will not change the processes or manufacturing procedures or alter the release of effluents to the environment. Therefore, the proposed change 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 Section 7, consultation of the Endangered Species Act, is not required, because the proposed action is administrative and procedural in nature and will not affect listed species or critical habitat. Likewise, the NRC staff has determined that the proposed 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 Proposed Action:

As an alternative to the proposed action, the staff considered taking no action, which would leave in place the current regulations 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 proposed action is preferred because it clarifies the NRC’s authority to impose a civil penalty directly on contractors or subcontractors who violate the NRC’s employee protection regulations and will serve the dual objectives of deterring contractors and subcontractors from violating the NRC’s employee protection regulations and allowing employees to raise regulatory and safety concerns without fear of retaliation.

Alternative Use of Resources:

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

Agencies and Persons Consulted:

No agencies or persons outside the NRC were consulted in connection with the preparation of this draft Environmental Assessment. The NRC has 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.

Finding of No Significant Impact:

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that the proposed 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 proposed amendments would establish a civil penalty as a possible sanction for contractors or subcontractors who violate the NRC employee protection requirements and would make the employee protection requirements in 10 CFR Part 76 consistent with the other NRC employee protection requirements. The proposed amendments are procedural in nature and would 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. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the environmental assessment may be submitted to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff.

# **Draft Regulatory Analysis for Proposed 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, 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 proposed rule would 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. Further, 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 proposing to amend its regulations in 10 CFR 76.7 to provide that the Commission may impose a civil penalty on the United States Enrichment Corporation (Corporation) as well as a contractor or subcontractor of the Corporation. This change is being proposed 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 Proposed Rule Alternative**

Under the proposed rule alternative, the NRC would revise its regulations for employee protection in 10 CFR 30.7, 40.7, 50.7, 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 proposed rule alternative would revise the regulations in 10 CFR 76.7 to provide that the Commission may impose a civil penalty on the Corporation, as well as a contractor or subcontractor of the Corporation. This change is being proposed to 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 proposed rule. Subsection 3.1 identifies the attributes that the proposed rule is expected to affect. Subsection 3.2 describes the methodology used to analyze the values and impacts associated with the proposed rule.

#### **3.1 Identification of Affected Attributes**

The attributes that the proposed 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) would be affected under the proposed rule.

- *NRC Implementation.* The NRC would incur costs to place the proposed action into operation. This would include costs incurred to (1) complete the rulemaking, (2) revise related policy and guidance documents, (3) develop a training course on changes to the employee protection regulations and (4) train NRC staff who need to enforce the regulations.
- *Regulatory Efficiency.* The proposed rule would enhance regulatory efficiency by clarifying in the regulations in 10 CFR 30.7, 40.7, 50.7, 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 proposed for 10 CFR 76.7 to specify the availability of civil penalties as an enforcement action against the Corporation as well as a contractor or subcontractor of the Corporation.
- *Other Considerations.* The proposed rule could increase public 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 would 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.

The proposed rule would not be 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 proposed 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 proposed amendments would 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 proposing to amend its regulations in 10 CFR 76.7 to specify that the Commission may impose a civil penalty on the Corporation as well as a contractor or subcontractor of the Corporation. This change is being proposed to bring this regulation into conformance with the NRC's other employee protection regulations and would enhance regulatory efficiency.

*Other Considerations.* Since 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 proposed rule, the Commission would be able to bring the full scope of enforcement actions to bear on contractors or subcontractors who violate its regulations. Thus, any party engaging in activities with non-licensee contractors or subcontractors can be more confident in using their services knowing that the NRC has codified imposition of a civil penalty on these contractors or subcontractors when they violate the employee protection 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 where the licensee takes prompt and comprehensive action to remedy the situation. The proposed rule could also increase public confidence in the NRC and NRC licensees and applicants and non-licensee contractors and subcontractors because there would be a more systematic approach to imposing civil penalties when employee protection regulations are violated.

The direct imposition of civil penalties on non-licensee contractors and subcontractors would 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.* The NRC staff estimates that 1,700 staff-hours will be needed to complete this rulemaking. Assuming a conversion factor of \$88 per staff-hour, the associated cost to the NRC is \$149,600. In addition, implementation of the proposed rule would require minor conforming revisions to the NRC Enforcement Policy and the NRC Enforcement Manual. The NRC staff estimates that revising these documents would require about 40 staff-hours or \$3,520. Further, the NRC will incur additional 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 cost is \$1,408. The cost to train 10 people for two hours, plus the instructor's time of two hours, is estimated to be \$1,936.

The total NRC staff resources needed to implement the rulemaking are estimated to be \$155,864 (1.2 FTE, based on 1,460 hours/FTE).

## **4. Results and Decision Rationale**

As shown above, the total cost to the NRC to implement this rulemaking is estimated to be \$156,000. 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 NRC staff recommends proceeding with the proposed rulemaking because the changes 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 proposed 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 proposed 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 where there are employee protection violations involving both licensee and contractor culpability or situations in which the licensee is aware of discrimination by its contractor and does not take immediate action to remedy the situation.

The proposed rule is consistent with NRC's strategic objective and performance goals. The proposed rule will continue to ensure the protection of public health and safety and the environment, as well as providing 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.

## **6. Implementation**

After the publication of the proposed rule in the *Federal Register* and the consideration and resolution of public comments, a final rule will be published, which will become effective 30 days after its publication in the *Federal Register*. No impediments to the implementation of the recommended alternative have been identified.

The resources estimated to implement this rulemaking are 1.2 full-time equivalent (FTE) positions (0.8 FTE in the Office of Enforcement and 0.4 FTE in other offices) over approximately two years. This estimate is based on completion of the rulemaking in FY 2007.