

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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 April 17, 2006. 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 Web site to Carol Gallagher (301) 415-5905; e-mail [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 e-mail 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 any term, condition, or limitation of any license or certification issued thereunder, 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 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. 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 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,

<sup>1</sup> In an earlier case, CLI-93-23, 38 NRC 169, 178-84 (1993)), the Commission held that Five Star Products is a "subcontractor" within the meaning of Section 211 of the ERA and 10 CFR 50.7.

<sup>2</sup> The Supplementary Information states that part 76 is based upon comparable requirements; in

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.

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 States' 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 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 Agency-wide 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
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 cannot be adopted by Agreement States. Category

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).

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 categorized as Compatibility Category D, and therefore do not need to be adopted by Agreement States. However, the NRC is seeking comment on the Category D designation of these regulations. In this regard, the NRC specifically invites comment regarding the following: (1) The effect potential inconsistencies in individual state employee protection regulations would have on a national regulatory approach that seeks to foster an environment in which safety issues can be openly identified without fear of retribution, and (2) evidence of any situations in which employees in Agreement States have been adversely affected by a lack of consistency in employee protection regulations.

Comments on this topic should be submitted to the NRC as indicated under the **ADDRESSES** heading.

#### 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 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. 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 as 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, applicant, or a contractor or subcontractor of the licensee 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.

\* \* \* \* \*

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.
- \* \* \* \* \*

Dated at Rockville, Maryland, this 25th day of January, 2006.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E6-1211 Filed 1-30-06; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-23734; Directorate Identifier 2005-NM-174-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 757 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757 airplanes. This proposed AD would require installing a control wheel damper assembly at the first officer's drum bracket assembly and aileron quadrant beneath the flight deck floor in section 41; doing a functional test and adjustment of the new installation; and doing related investigative/corrective actions if necessary. For certain airplanes, this proposed AD would require doing an additional adjustment test of the re-located control wheel position sensor, and an operational test of the flight data recorder and the digital flight data acquisition unit. This proposed AD also would require installing vortex generators (vortilons) on the leading edge of the outboard main flap on certain airplanes. This proposed AD results from several reports that flightcrews experienced unintended roll oscillations during final approach, just before landing. We are proposing this AD to prevent unintended roll oscillations near touchdown, which could result in loss

of directional control of the airplane, and consequent airplane damage and/or injury to flightcrew and passengers.

**DATES:** We must receive comments on this proposed AD by March 17, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL-401, Washington, DC 20590.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** John Neff, Aerospace Engineer, Flight Test Branch, ANM-160S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6521; fax (425) 917-6590.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2006-23734; Directorate Identifier 2005-NM-174-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the

comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

#### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

#### Discussion

We have received eleven confirmed reports that flightcrews on Boeing Model 757 airplanes experienced unintended roll oscillations during final approach, just before landing. One event resulted in a nose gear collapse after a hard landing; another event resulted in a tail strike during a landing that was aborted because of the oscillations. Of the eleven events that have been confirmed, three occurred with Flight Test personnel aboard, during flight-testing activities.

These roll oscillations occur when the pilot makes large, rapid movements of the control wheel, and the airplane does not respond as expected. Boeing has developed a damper for the control wheel that reduces the likelihood of these roll oscillations by providing resistive force to large, rapid control wheel movements that exceed a set value.

We have also received flight test data indicating that one potential cause of these unintended roll oscillations occurs when airflow over the outboard trailing edge flap separates due to the movement of the spoilers resulting from large control wheel inputs. Abrupt control wheel inputs to counteract the resulting roll can lead to roll oscillations of increasing magnitude. Boeing has developed vortex generators (vortilons) that create vortices over the flap surface and help to mitigate a sudden and premature airflow separation when the flaps are set in landing configuration and the spoilers forward of the flaps are deployed.

Unintended roll oscillations near touchdown, if not corrected, could result in loss of directional control of the airplane, and consequent airplane