

AF43-2

PDR (34)

From: Maria Schwartz
To: TWD2.TWP9.MLA
Date: 5/24/96 8:40am
Subject: Pts 2 and 51

Mark,

We have looked at the direct final rule and have the following comments (Stuart Treby has also reviewed so these comments represent the comments from OGC) -- however, we cannot provide concurrence until we see the final revision with whatever else Enforcement has added. When you have that, please send it up for us to look at.

Page 1, under summary, starting with 4th line:

"...rule also provides that the NRC may use discretion when determining whether to require a written... When the NRC believes that a licensee or other person who receives a notice of violation has already"

Page 2, under background, 2nd par. starting with 4th line:

"... NRC may use discretion when determining whether to require a written explanation or statement in reply... When the NRC believes that a licensee has already..."

Page 3, under "Section 2.201 Notice of Violation: starting with 9th line:

"This charge grants the NRC discretion when determining whether to require the submittal of a written statement when the NRC believes a licensee or other person has already..."

The section on Procedural Background is fine.

CC: SAT

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 51

Deletion of Outdated References and Minor Change

RIN 3150-AF43

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to delete all references to Appendix C to 10 CFR Part 2, inasmuch as Appendix C has been removed from the Code of Federal Regulations because it is a Policy Statement, not a regulation. This final rule also provides that the NRC may use discretion ^{when determining} ~~as to~~ whether to require a written explanation or statement in reply to a notice of violation. ^{When} ~~If~~ the NRC believes that ^a ~~the~~ licensee or other person who received ^{5 a} ~~the~~ notice of violation has already adequately addressed all the issues contained in that notice, at the discretion of the NRC, further written responses may not be required.

DATE: This final rule is effective on [insert date 60 days after publication] unless significant adverse comments are received by the NRC. Comments should be submitted by [insert date 30 days after publication]. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:45 am and

4:15 pm Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: M. L. Au, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6181, E-Mail: INTERNET:MLA@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The NRC has removed Appendix C, "General Statement of Policy and Procedure for NRC Enforcement Actions," from 10 CFR Part 2 (60 FR 34380; June 30, 1995) inasmuch as the Enforcement Policy is a Policy Statement, not a regulation. The enforcement policy, "General Statement of Policy and Procedures for NRC Enforcement Actions -- Enforcement Policy," was published as a Policy Statement on June 30, 1995 (60 FR 34381). It was also published as NUREG-1600 in July 1995.

There are two sections (10 CFR 2.8(b) and 51.10(d)) in the Commission's regulations that still reference Appendix C to Part 2. This rulemaking deletes both outdated references. This rulemaking also amends § 2.201, "Notice of Violation," to provide that the NRC may use discretion ^{when determining} ~~as to~~ whether to require a written explanation or statement in reply to a notice of violation. ^{When} ~~if~~ the NRC believes that ^a ~~the~~ licensee has already adequately addressed all the issues contained in that notice, further written responses may not be required.

Discussion

Section 2.8 Information collection requirements: OMB approval.

Section 2.8(a) states that the Office of Management and Budget (OMB) has approved the information collection requirements. Section 2.8(b) states that the approved information collection requirements appear in Appendix C to 10 CFR Part 2. Because Appendix C has been removed from Part 2, there are no longer any information collection requirements in this part. Thus, § 2.8 is amended to state that there are no information collection requirements contained in this part. It should be noted that any burden for the information collections related to enforcement actions is currently associated with the policy statement (June 30, 1995; 60 FR 34380), rather than with *former* Part 2.

Section 2.201 Notice of violation.

Section 2.201(a) states that, in response to a notice of violation, a licensee or other person subject to the jurisdiction of the Commission to whom a notice of violation has been sent will be required to submit a written statement in reply, including corrective steps that have been taken, and the date when full compliance will be achieved. However, when a licensee or other person has already adequately addressed in writing the issues contained in the notice of violation, the licensee or other person has already, in effect, responded to the violation and a further written statement may be unnecessary. To clarify this position, paragraph (a) is amended to replace the existing phrase "will require" with "may require." This change grants the NRC discretion ^{when determining} ~~on~~ whether to require the submittal of a written statement ^{when} ~~if~~ the NRC believes that ^a ~~the~~ licensee or other person has already adequately addressed all the issues contained in that notice of violation.