

NUCLEAR REGULATORY COMMISSION**10 CFR Parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150**

RIN 3150-AF35

Deliberate Misconduct by Unlicensed Persons

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to extend the Deliberate Misconduct Rule to six categories of persons: applicants for NRC licenses; applicants for, or holders of, certificates of compliance; applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants; applicants for, or holders of, certificates of registration; applicants for, or holders of, quality assurance program approvals; and the employees, contractors, subcontractors and consultants of the above five categories of persons. This amendment would subject these categories of persons to enforcement action for deliberate misconduct. Deliberate misconduct may involve providing information that is known to be incomplete or inaccurate in some respect material to the NRC, or it may involve conduct that causes or would have caused, if not detected, a licensee, certificate holder, or applicant to be in violation of any of the Commission's requirements.

EFFECTIVE DATE: This final rule is effective on February 12, 1998.

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SUPPLEMENTARY INFORMATION:**Background**

On August 15, 1991 (56 FR 40664), the Commission adopted changes to NRC regulations that established the Deliberate Misconduct Rule found at 10 CFR 30.10, 40.10, 50.5, 60.11, 61.9b, 70.10, 72.12, and 110.7b, which applies to any licensee or any employee of a licensee; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee. In addition, 10 CFR 150.2, Scope, provides notice to persons conducting activities under reciprocity in areas of NRC jurisdiction that they are subject to the

rule (see 10 CFR 150.20, Recognition of Agreement State licenses). The Deliberate Misconduct Rule placed licensed and unlicensed persons on notice that they may be subject to enforcement action for deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any of the Commission's requirements, or for deliberately providing to the NRC, a licensee, or contractor, information that is incomplete or inaccurate in some respect material to the NRC.

Currently, the Deliberate Misconduct Rule does not apply to:

- (1) Applicants for NRC licenses;
- (2) Applicants for, or holders of, certificates of compliance issued under 10 CFR Parts 71 and 72, including those for dry cask storage;
- (3) Applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants issued under 10 CFR Part 52;
- (4) Applicants for, or holders of, certificates of registration issued under Parts 30 and 32;
- (5) Applicants for, or holders of, quality assurance program approvals issued under Part 71; and
- (6) The employees, contractors, subcontractors and consultants of the first five categories of persons.

To ensure that these persons are subject to enforcement action for wrongdoing under the Deliberate Misconduct Rule, on October 4, 1996 the NRC issued a proposed rule to extend the rule to them (61 FR 51835). This final rule will also add the Deliberate Misconduct Rule to 10 CFR parts 52 and 71 where it currently does not appear.

The staff does not believe that it is necessary to add the Deliberate Misconduct Rule to 10 CFR part 54 because licensees applying to renew their operating licenses for nuclear power plants are already subject to this rule as licensees under 10 CFR part 50. Similarly, the staff does not believe that it is necessary to add the Deliberate Misconduct Rule to 10 CFR part 55 because applicants for, and holders of, reactor operators' licenses are already subject to this rule as employees of 10 CFR part 50 licensees. Moreover, licensed operators are subject to all applicable Commission requirements (see 10 CFR 55.53 (d)) and thus a finding of deliberate misconduct is not required to take enforcement action against a licensed reactor operator.

Discussion

It is important that all information provided to the NRC be complete and

accurate in all material respects. Section 186 of the Atomic Energy Act of 1954, as amended (AEA), underscores this need by providing that "[a] license may be revoked for any material false statement in the application or any statement of fact required [by statute or regulation] * * *". The Commission has promulgated rules concerning completeness and accuracy of information that specifically apply to information provided to the Commission by a licensee or an applicant for a license (see 10 CFR 30.9(a), 40.9(a), 50.9(a), 60.10(a), 61.9a(a), 70.9(a), 71.az, 72.11(a), 76.9(a) and 110.7a(a)). Similarly, subsection (b) of each of these sections, which deals with notification to the Commission of significant safety information, refers to applicants as well as licensees. Violation of these provisions can result in denial of the license application, civil enforcement action against a licensee, or, if appropriate, referral to the Department of Justice for consideration for criminal prosecution.

The Deliberate Misconduct Rule permits the NRC to take individual action, such as issuing an order, against an individual who deliberately provides information that the individual knows to be incomplete or inaccurate. However, when the Deliberate Misconduct Rule was promulgated, it did not address applicants for licenses; applicants for, and holders of, certificates of compliance or certificates of registration; applicants for, and holders of, early site permits, certified designs and combined licenses; and applicants for, and holders of, quality assurance program approvals, and their employees, and contractors and consultants, and their employees.

Incomplete or inaccurate information has potential safety significance, whether submitted before or after a license, certificate, permit, or approval has been issued. The Commission has clearly emphasized the importance of applications containing accurate information; e.g., "[The Commission] cannot overstate the importance of a licensee's or an applicant's duty to provide the Commission with accurate information." *Randall C. Orem, D.O.*, CLI-93-14, 37 NRC 423 (1993). The *Orem* case involved a consultant to an applicant for a license who provided inaccurate information that was included in the license application and the Commission found that information as to the status of the facility was material to the licensing decision. *Id.* at 428.

The Commission believes that there may be significant safety consequences from the deliberate submission of false

or incomplete information or other deliberate wrongdoing by an applicant for a license or other unlicensed persons covered by this modification to the Deliberate Misconduct Rule. For example, a quality assurance program that is submitted to the NRC for approval but is supported by deliberately falsified data that mask a significant defect could be a public health and safety threat. Under the present Deliberate Misconduct Rule, a certificate holder who obtained a certificate by deliberate submittal of false information could escape individual NRC enforcement action because the deliberate misconduct may not have put an "NRC licensee" in violation. To effectively exercise its authority under the AEA, the Commission needs to prevent or otherwise deter the deliberate submittal of materially false or inaccurate information by those entities not currently covered by the rule.

The Commission is amending the Deliberate Misconduct Rule each place it appears in 10 CFR Chapter I to make the rule apply to applicants for NRC licenses; to applicants for, and holders of, certificates of compliance issued under 10 CFR parts 71 and 72; to applicants for, and holders of, early site permits, certified designs, and combined licenses for nuclear power plants issued under 10 CFR part 52; to applicants for, and holders of, certificates of registration issued under parts 30 and 32; and to applicants for, and holders of, quality assurance program approvals issued under part 71; and to the employees, contractors, subcontractors and consultants of all the above categories of persons. This would include, for example, a consultant engaged by an applicant to prepare a license application for such activities as radiography, well logging, irradiation, and teletherapy. It would also apply to a consultant preparing an application for a certificate for a spent fuel cask, or individuals conducting performance tests to support such an application. The amendments to the Deliberate Misconduct Rule will appear in 10 CFR 30.10, 40.10, 50.5, 60.11, 61.9b, 70.10, 72.12, and 110.7b. Section 71.11 is being added to incorporate the rule in 10 CFR part 71 and 10 CFR 52.10 is being added to incorporate the rule in 10 CFR part 52. In addition, 10 CFR 150.2 and 10 CFR 32.1(b) are being revised to incorporate the proposed changes. Also, the scope provisions found in 10 CFR 30.1, 40.2, 50.1, 52.1, 60.1, 61.1(c), 70.2, 71.0, 72.2, and 110.1(a) are being modified to reflect these revisions to the rule. The

Commission is also making a minor language change to improve readability by altering the phrase "but for detection" to "if not detected" where the phrase appears in each rule, but intends no substantive change by this revision. Having this enforcement authority available will help the NRC pursue redress in cases of deliberate misconduct by unlicensed persons acting within the scope of the Commission's jurisdiction and may deter such behavior as well.

This rulemaking extending the Deliberate Misconduct Rule to applicants for NRC licenses; applicants for, and holders of, certificates of compliance issued under 10 CFR parts 71 and 72; applicants for, and holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants issued under 10 CFR part 52; applicants for, and holders of, certificates of registration issued under parts 30 and 32; and applicants for, and holders of, quality assurance program approvals issued under part 71; and to the employees, contractors, subcontractors and consultants of all the above categories of persons, implements the Commission's authority under the AEA to issue regulations and orders to any person (defined in Section 11s of the AEA to include, e.g., an individual, corporation, firm, or a Federal, State, or local agency) who engages in conduct affecting activities within the Commission's subject matter jurisdiction.

In brief, Section 161i of the AEA provides broad authority to issue such regulations and orders as the Commission deems necessary to govern any activity authorized pursuant to the AEA in order to protect public health and safety. Section 161b of the AEA similarly authorizes the Commission to issue regulations and orders to impose "standards and instructions" on persons to govern the possession and use of special nuclear material, source material, and byproduct material, as may be necessary or desirable to provide for the common defense and security and protect public health and safety. Section 234 of the AEA authorizes the NRC to impose civil penalties on certain unlicensed persons for violating the NRC's substantive requirements. Section 234a of the AEA reads as follows:

Any person who (1) violates any licensing or certification provision of Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or certification issued thereunder, or (2) commits any violation for which a license may be revoked

under Section 186, shall be subject to a civil penalty, * * *.

The licensing provisions listed in Section 234a generally prohibit the possession, use, receipt, or transfer of nuclear materials or facilities unless authorized by and in accordance with a license.

The amendments are made under the authority of sections 161b and i and the above-identified licensing provisions in Section 234. The changes apply to any person in the categories enumerated above who engages in deliberate misconduct, or who deliberately submits materially incomplete or inaccurate information, as provided in the rule. By imposing a direct prohibition on unlicensed persons, the Commission may be able to exercise its Section 234 authority to impose civil penalties on unlicensed persons when they deliberately cause violations of requirements issued under the licensing provisions enumerated in Section 234. In cases when the Commission issues an order (other than an order imposing a civil penalty) to a person based on deliberate misconduct, the order would be issued in part pursuant to a regulation (e.g., 10 CFR 30.10) that was promulgated under a licensing provision of the AEA. A civil penalty could be available for violations of such an order. In addition, criminal sanctions under Section 223 of the AEA are available for willful violations of orders and regulations issued under sections 161b and i. Injunctions are also available under Section 232 of the AEA for violations of Commission orders.

Summary of Public Comments

On December 18, 1996, the comment period for the proposed amendments to the Deliberate Misconduct Rule closed. The NRC received 6 comments on the proposed rule which are addressed below. One comment, in addition to favoring speedy adoption of the proposed rule, requested information on the status of NRC enforcement cases against certain dry cask storage vendors which the NRC views to be outside the scope of this proposed rulemaking. Copies of the public comments are available in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. A summary of the comments is provided below.

Comment: One utility commenter was concerned that the proposed revisions to the rule did not address preliminary or "for information only" information that may be sent to the NRC staff. This commenter believed that situations could arise where licensees provide information to the NRC staff to support teleconferences or meetings and where

the information is considered to be preliminary and subject to change over time. In these cases, the commenter believed preliminary information should not be construed as intended to be complete and the conclusion reached that deliberate misconduct occurred. A second issue raised by this commenter pertained to how potentially erroneous information in a Safety Evaluation Report could result in a conclusion reached by the NRC staff that since this erroneous information is inconsistent with that provided in the licensee's submittal, the licensee committed willful misconduct.

Response: The NRC's completeness and accuracy rules require that all information provided to the Commission shall be complete and accurate in all material respects (10 CFR 30.9, 40.9, 50.9, etc.). The deliberate submission of information which is incomplete or inaccurate in material respects, where the submitter of the information knows of the incompleteness or inaccuracy, may be considered deliberate misconduct. However, the submission of information acknowledged to be incomplete would not be considered deliberate misconduct if it is made in good faith and based on the best information available, but is corrected later based on additional information or analysis. The NRC's General Statement of Policy and Procedures for Enforcement Actions (NUREG-1600) (Enforcement Policy) points out that a citation is not made if an initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advances in technology. Also, the Commission recognizes that oral information may in some situations be less reliable. This is addressed in Section IX of the Enforcement Policy.

Finally, the Commission does not take lightly its responsibility in this area and carefully considers each action involving an individual. As the Commission stated in the original Deliberate Misconduct Rule:

"It would be an erroneous reading of the final rule on deliberate misconduct to conclude that conscientious people may be subject to personal liability for mistakes. The Commission realizes that people may make mistakes while acting in good faith. Enforcement actions directly against individuals are not to be used for activities caused by merely negligent conduct. These persons should have no fear of individual liability under this regulation, as the rule requires that there be deliberate misconduct before the rule's sanctions may be imposed. The Commission recognizes, * * * that enforcement

actions involving individuals are significant actions that need to be closely controlled and judiciously applied." (See 56 FR 40664, 40681)

Comment: One commenter, the Nuclear Energy Institute (NEI), believes that the NRC is exceeding its statutory authority under the Atomic Energy Act of 1954 (the AEA) in promulgating these amendments to the Deliberate Misconduct Rule because, in the view of NEI, authority over non-licensee persons was not provided by Congress other than in limited circumstances carved out in the AEA as exceptions. In particular, NEI believes that Section 161i(3) of the AEA does not provide jurisdiction over non-licensee persons because it does not contain the operative phrase "any person" and therefore, NEI infers, is confined to licensees. NEI recognizes that deliberately-provided misinformation or other deliberate misconduct could have a very serious effect on public health and safety and thus needs to be deterred. However, in the view of NEI, 18 U.S.C. § 1001, the general criminal statute applicable to the Federal government and its agencies, provides an adequate deterrent to the wrongdoers NRC seeks to capture in this rulemaking.

Response: The Commission considered, but rejected, the objection that it did not have jurisdiction over non-licensees at the time it issued the original Deliberate Misconduct Rule. See 56 FR 40664, (1991). As the Commission stated:

In enacting Section 161 of the 1954 Act, Congress conferred uniquely broad and flexible authority on the Commission. Specifically, Congress authorized the Commission in Section 161 to 'prescribe such * * * regulations * * * as it may deem necessary to govern any activity authorized pursuant to [the 1954 Act], in order to protect health and minimize danger to life and property.'

With respect to the absence of specific provisions setting forth the limits of the NRC's personal jurisdiction, the Commission stated at 56 FR 40666-40667:

Where Congress does not include statutory provisions governing *in personam* jurisdiction, it is appropriate to look to the scope of subject matter jurisdiction in order to determine the scope of *in personam* jurisdiction. Since Congress did not include any specific personal jurisdiction provisions in the 1954 Act, or any limitations on such jurisdiction, the NRC is authorized to assert its personal jurisdiction over persons based on the maximum limits of its subject matter jurisdiction. The agency's personal jurisdiction is established when a person acts within the agency's subject matter jurisdiction. * * * The persons who are

being brought within the scope of the Deliberate Misconduct Rule in these amendments are all persons who, in some way, engage in activities within NRC's subject matter jurisdiction. Thus, the Commission discerns no statutory prohibition on making these persons subject to the restrictions of the Deliberate Misconduct Rule.

NEI also contends that the Deliberate Misconduct Rule and these amendments are not needed because an adequate deterrent and remedy is provided by 18 U.S.C. § 1001. This statute allows the imposition of criminal penalties for persons who, *inter alia*, knowingly and willfully make false statements to an agency of the Federal Government. There are several reasons why this enforcement option is not an adequate substitute for the Deliberate Misconduct Rule. First, 18 U.S.C. § 1001 punishes deliberate false statements but does not cover the types of deliberate misconduct captured by Section a(1) of the rule. Second, the civil enforcement penalties available to the NRC for violations of its rule, precisely because they are less drastic than criminal penalties, are more flexible and, thus, are more likely to be used in appropriate cases, affording the NRC greater ability to deter and remedy deliberate misconduct.

Comment: NEI also commented that one of the rule's standards for enforcement action—knowingly providing incomplete or inaccurate information which is "in some respect material to the NRC"—is overly broad. This standard appears to permit the NRC to take enforcement action whether or not a violation of NRC regulations has occurred or would have occurred but for detection. This breadth of scope results in the standard not being sufficiently clear to inform the public of the elements of the prohibited action.

Response: The Commission disagrees with the commenter's assertion that the rule is overly broad. The rule specifies that the persons who are delineated as being subject to the rule must *knowingly provide* components, materials or other goods and services that relate to, e.g., a licensee's or certificate holder's activities subject to NRC regulation. Such persons, therefore, know that they are acting in an area that relates to activities within NRC's regulatory jurisdiction. As the Commission said with respect to a similar comment objecting to the original Deliberate Misconduct Rule, "a person with the requisite knowledge who deliberately provides false or inaccurate information that is material to the NRC presents a health and safety concern within the NRC's regulatory sphere." 56 FR 40670. The fact that no actual violation has

occurred, or would have occurred but for detection, has no bearing on whether, from a health and safety standpoint, that person should be involved in nuclear activities. Although, the commenter is correct that the standard permits the NRC to take enforcement action whether or not a violation has occurred, or would have occurred but for detection, the Commission does not believe that this fact renders the standard overly broad.

Comment: One commenter, the JAI Corporation, proposed that the scope of the proposed rule be broadened to include persons submitting information pursuant to the notification requirements of 10 CFR part 21. The commenter, apparently believing that such persons are not presently covered by the Deliberate Misconduct Rule, pointed to the unfairness that would exist if persons who knowingly submit incomplete or inaccurate information to licensees are penalized but persons who knowingly submit incomplete or inaccurate information to the NRC regarding defects or non-compliance under Part 21 are not penalized.

Response: Under 10 CFR part 21, certain categories of persons, e.g., individual directors or responsible officers of a corporation, must notify the NRC when they obtain certain types of information; e.g., information concerning defects in components which could cause a substantial safety hazard. When such persons provide information to the NRC they are subject to the Deliberate Misconduct Rule as it appears in the relevant Part of Chapter I of 10 CFR. For example, if the director of a corporation obtains information indicating a failure to comply or a defect affecting a basic component that is supplied for a nuclear power plant subject to 10 CFR part 50, the director is subject to the Deliberate Misconduct Rule as it appears in part 50 (10 CFR 50.5) when reporting this failure to comply or defect to the NRC. Further, the Deliberate Misconduct Rule makes no distinction between deliberately submitting information known to be incomplete or inaccurate to the NRC and submitting the same information to a licensee, or to a licensee's contractor or subcontractor. Thus, the regulations do not countenance the disparity of treatment envisioned by the commenter.

Comment: One commenter, a source production and equipment company, supported the proposed rule but also recommended that the rule be revised to specifically apply to the persons who maintain the equipment malfunction records that are required by the Quality Control and Quality Assurance (QA/QC) programs which are required under 10

CFR part 32 for the manufacture and distribution of radiography equipment. The commenter recognizes that because these records are not part of the Quality Assurance program itself, they are not submitted to the NRC as part of a registration certificate application. Nevertheless, the commenter believes that the accuracy and integrity of these records are essential for the QA/QC program to be effective and thus the Deliberate Misconduct Rule should apply to persons who maintain equipment malfunction records for certificate holders.

Response: The Deliberate Misconduct Rule is being made applicable to certificate holders and applicants, and to their employees, contractors and subcontractors, not only when they deliberately submit information to the NRC, but also when they deliberately submit to a certificate of registration holder or applicant, or a certificate holder's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. Thus, for example, an employee or contractor of a certificate of registration holder responsible for maintaining equipment malfunction records who knowingly submits incomplete or inaccurate information to the certificate of registration holder violates the Deliberate Misconduct Rule if the information submitted is in some respect material to the NRC. However, in the absence of a requirement for maintenance of equipment malfunction records, a person generating an inaccurate or incomplete equipment malfunction record is not subject to the Deliberate Misconduct Rule unless and until these records are actually submitted to one of the persons covered by section a(2) of the rule.

Comment: One commenter, while agreeing with the proposed rule, did not see why amendment of the Deliberate Misconduct Rule is necessary with respect to part 72 certificate holders and their contractors and subcontractors because, in the view of the commenter, the rule presently encompasses the contractors and subcontractors of licensees and certificate holders are contractors to licensees, and thus are covered by the rule as it now exists.

Response: Insofar as certificate holders are contractors to licensees (and certificate holders' contractors and subcontractors are subcontractors to licensees), the commenter is correct. Those certificate holders, and their contractors and subcontractors, are covered by the present rule. However, the NRC does not require the existence

of a contract as a prerequisite to the issuance of a Certificate of Compliance (see 72.236; 72.238). Thus, it is possible for a certificate holder not to be a contractor to a licensee. The amended rule will cover those certificate holders.

Criminal Penalties

For purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule under one or more of sections 161b, 161i or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule relates to enforcement matters and, therefore, falls within the scope of 10 CFR 51.10(d). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement 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, 3150-0151, 3150-0127, 3150-0135, 3150-0009, 3150-0132, 3150-0036, and 3150-0032.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Compatibility of Agreement State Regulations

The Commission did not make the original Deliberate Misconduct Rule and the supporting enforcement guidance a matter of Agreement State compatibility. However, in the intervening period, the Commission has re-examined its compatibility policy and issued two new policy statements which establish principles for determining the degree of compatibility expected between NRC and Agreement State regulations: "Statement of Principles and Policy for the Agreement State Program," and "Policy Statement on Adequacy and Compatibility of Agreement State Programs," (62 FR 46517). The NRC staff, in conjunction with the Joint NRC-Agreement State Adequacy and Compatibility Working Group, re-evaluated the compatibility categorization of 10 CFR 30.10, 40.10 and 70.10 and recommended that these

deliberate misconduct requirements be required for compatibility under Category C of the new Policy Statement. Under Category C, Agreement States would have to adopt the essential objectives of these requirements to avoid conflicts, duplications or gaps between the NRC and Agreement State Programs. The Commission has approved staff's plan to provide an opportunity for the Agreement States and the public to comment on this and other recommendations. After receipt and resolution of comments, the staff will submit final recommendations to the Commission for approval.

Regulatory Analysis

The Nuclear Regulatory Commission has statutory authority to issue enforcement actions against unlicensed persons whose deliberate misconduct causes a licensee or a certificate holder or an applicant for a license or certificate to be in violation of the Commission's requirements. On August 15, 1991 (56 FR 40664), the NRC promulgated the Deliberate Misconduct Rule which put licensed and unlicensed persons on notice that they may be subject to enforcement action for deliberate misconduct that causes or, if not detected, would cause a licensee to be in violation of any of the Commission's requirements or for deliberately providing to the NRC, a licensee or a contractor information that is incomplete or inaccurate in some respect material to the NRC. However, the Deliberate Misconduct Rule does not specifically apply to: (1) Applicants for NRC licenses, (2) applicants for, and holders of, certificates of compliance issued under parts 71 and 72, (3) applicants for, and holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants issued under part 52, (4) applicants for, and holders of, certificates of registration issued under parts 30 and 32, (5) applicants for, and holders of, quality assurance program approvals issued under part 71, and (6) the employees, contractors, subcontractors and consultants of the first five categories of persons.

On November 29, 1991, the NRC staff issued an Order Revoking License to Dr. Randall C. Orem after the NRC staff learned that information in his license application was false and that the application had been prepared by a consultant who had provided the false information. See *Randall C. Orem, D.O.*, CLI-93-14, 37 NRC 423 (1993). In this case, the NRC staff realized that under the provisions of the existing Deliberate Misconduct Rule, it was unable to take additional enforcement action against

Dr. Orem and was precluded from taking enforcement action against the consultant because the consultant was working for an applicant rather than for a licensee. Subsequently, the Commission realized that other categories of persons within the Commission's jurisdiction had not been explicitly included within the Deliberate Misconduct Rule; e.g., certificate holders under 10 CFR parts 71 and 72 and holders of early site permits, certified design certifications and combined licenses under 10 CFR part 52.

The Commission believes that there may be significant safety consequences from the deliberate submission of false or incomplete information or other deliberate wrongdoing by an applicant for a license or other unlicensed persons proposed to be covered by this modification to the Deliberate Misconduct Rule. For example, a spent fuel storage cask that is certified by the NRC on the basis of falsified test data could represent a threat to public health and safety. Similarly, a quality assurance program that is submitted to the NRC for approval, but is supported by deliberately falsified data that mask a significant defect, could also be a public health and safety threat. Because the potential for injury is serious, the NRC knows no reason why the Deliberate Misconduct Rule should not apply to persons who deliberately submit materially incomplete or inaccurate information, whether that submittal is by or on behalf of an applicant, or by or on behalf of a holder of a license, certificate, permit or approval.

The objective of the rule is to explicitly put those persons encompassed by this modification of the Deliberate Misconduct Rule on notice that enforcement action may be taken against them for deliberate misconduct or deliberate submission of incomplete or inaccurate information, in relation to NRC licensed activities. Under Section 234 of the Atomic Energy Act, the Commission may impose civil penalties on any person who violates any rule, regulation, or order issued under any one of the enumerated provisions of the Act, or who commits a violation for which a license may be revoked. The enforcement actions that may be taken, including orders limiting activities of wrongdoers in the future and civil penalties, will serve as a deterrent to others throughout the industry.

The alternatives available to the Commission are to promulgate a modification of the Deliberate Misconduct Rule, as is proposed herein, or do nothing. Given the fact that a case

has already occurred where the Commission was precluded from taking appropriate enforcement action against a consultant to an applicant, and the potential harm to the public, the alternative of doing nothing was rejected. The benefits of taking enforcement action are similar to those of taking action against licensed entities in that a civil penalty and attendant adverse publicity encourage future compliance, the Notice of Violation calls for a precise response as to corrective action taken, and an enforcement order, if obeyed, will directly control the involvement of an individual in a licensed activity. The effect of having these options available in the enforcement program should reduce the probability of repetitive violations by wrongdoers.

The NRC does not anticipate that additional investigations will be necessary to implement the rule because it focuses on the results of investigations. Based on experience, the NRC expects fewer than 10 additional cases per year to result in enforcement action being taken against unlicensed individuals. The cost of preparing and publishing the additional actions beyond the current workload is not significant.

The rule constitutes the preferred course of action and the cost involved in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The final rule would put: (1) Applicants for NRC licenses; (2) applicants for, and holders of, certificates of compliance issued under 10 CFR parts 71 and 72, including those for dry cask storage; (3) applicants for, and holders of, early site permits, standard design certifications, or combined licenses issued under 10 CFR part 52; (4) applicants for, and holders of, certificates of registration issued under 10 CFR parts 30 and 32; (5) applicants for, and holders of, quality assurance program approvals issued under 10 CFR part 71; and (6) the employees, contractors, subcontractors and consultants of the first five categories of persons on notice that they are subject to the Deliberate Misconduct Rule and, therefore, are subject to civil enforcement action if they deliberately cause a licensee, certificate holder, or an applicant for a license or certificate to

be in violation of NRC requirements. The final rule does not impose any additional obligations on entities that may fall within the definition of "small entities" as set forth in Section 601(6) of the Regulatory Flexibility Act; or within the definition of "small business" as found in Section 3 of the Small Business Act, 15 U.S.C. 632; or within the size standards adopted by the NRC on April 11, 1995 (60 FR 18344).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not "a major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

Enforcement Policy

Concurrently with publication of the Deliberate Misconduct Final Rule, the Commission is publishing modifications to NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions," to address enforcement action against the categories of unlicensed persons listed under this Final 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 32

Byproduct material, Criminal penalties, Nuclear materials, Labeling, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 60

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

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons stated in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150.

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).

Section 30.7 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. Section 30.1 is revised to read as follows:

§ 30.1 Scope.

This part prescribes rules applicable to all persons in the United States governing domestic licensing of byproduct material under the Atomic Energy Act of 1954, as amended (68 Stat. 919), and under title II of the Energy Reorganization Act of 1974 (88 Stat. 1242), and exemptions from the domestic licensing requirements permitted by Section 81 of the Act. This part also gives notice to all persons who knowingly provide to any licensee, applicant, certificate of registration holder, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, applicant's or certificate of registration holder's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 30.10.

3. Section 30.10 is revised to read as follows:

§ 30.10 Deliberate misconduct.

(a) Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, certificate of registration holder, an applicant, or a licensee's, certificate holder's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee, certificate of registration holder or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

4. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C.

2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

5. Section 32.1(b) is revised to read as follows:

§ 32.1 Purpose and scope.

* * * * *

(b) The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of part 30 of this chapter apply to applications, licenses and certificates of registration subject to this part.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

6. The authority citation for part 40 continues 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).

Section 40.7 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).

7. Section 40.2 is revised to read as follows:

§ 40.2 Scope.

Except as provided in §§ 40.11 to 40.14, inclusive, the regulations in this part apply to all persons in the United States. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 40.10.

8. Section 40.10 is revised to read as follows:

§ 40.10 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor,

employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

9. The authority citation for part 50 continues 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).

Section 50.7 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. 936, 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).

10. Section 50.1 is revised to read as follows:

§ 50.1 Basis, purpose, and procedures applicable.

The regulations in this part are promulgated by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242), to provide for the licensing of production and utilization facilities. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 50.5.

11. Section 50.5 is revised to read as follows:

§ 50.5 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete

or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

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

12. The authority citation for part 52 is revised to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

13. Section 52.1 is revised to read as follows:

§ 52.1 Scope.

This part governs the issuance of early site permits, standard design certifications, and combined licenses for nuclear power facilities licensed under Section 103 or 104b of the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242). This part also gives notice to all persons who knowingly provide to any holder of or applicant for an early site permit, standard design certification, or combined license, or to a contractor, subcontractor, or consultant of any of them, components, equipment, materials, or other goods or services, that relate to the activities of a holder of or applicant for an early site permit, standard design certification, or combined license, subject to this part, that they may be individually subject to NRC enforcement action for violation of § 52.9.

14. Section 52.9 is added to read as follows:

§ 52.9 Deliberate misconduct.

(a) Any holder of, or applicant for, an early site permit, standard design certification, or combined license, including its employees, contractors, subcontractors, or consultants and their employees, who knowingly provides to any holder of, or applicant for, an early site permit, standard design certification, or combined license, or to a contractor, subcontractor or consultant of any of them, equipment, materials, or other goods or services that relate to the activities of a holder of, or applicant for, an early site permit, standard design certification or combined license in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a holder of, or applicant for, an early site permit, standard design certification, or combined license, to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any permit, certification or license issued by the Commission; or

(2) Deliberately submit to the NRC, a holder of, or applicant for, an early site permit, standard design certification, or combined license, or a contractor, subcontractor, or consultant of any of them, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a holder of, or applicant for, an early site permit, standard design certification, or combined license, to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a holder of, or applicant for, an early site permit, certified design or combined license, or a contractor or subcontractor of any of them.

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

15. The authority citation for part 60 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, 2228, as amended (42 U.S.C. 10134, 10141) and Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

16. Section 60.1 is revised to read as follows:

§ 60.1 Purpose and scope.

This part prescribes rules governing the licensing of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated in accordance with the Nuclear Waste Policy Act of 1982. This part does not apply to any activity licensed under another part of this chapter. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 60.11.

17. Section 60.11 is revised to read as follows:

§ 60.11 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

18. The authority citation for part 61 continues to read 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).

19. Section 61.1(c) is revised to read as follows:

§ 61.1 Purpose and scope.

* * * * *

(c) This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 61.9b.

20. Section 61.9b is revised to read as follows:

§ 61.9b Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

21. The authority citation for part 70 continues 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, sec. 1701, 106 Stat. 2951, 2952, 2953 (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).

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 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (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 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

22. Section 70.2 is revised to read as follows:

§ 70.2 Scope.

Except as provided in §§ 70.11 to 70.13, inclusive, the regulations in this part apply to all persons in the United States. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment,

materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 70.10.

23. Section 70.10 is revised to read as follows:

§ 70.10 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

24. The authority citation for part 71 continues 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).

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

25. In § 71.0, paragraph (f) is added to read as follows:

§ 71.0 Purpose and scope.

* * * * *

(f) This part also gives notice to all persons who knowingly provide to any licensee, certificate holder, quality assurance program approval holder, applicant for a license, certificate, or quality assurance program approval or to a contractor, or subcontractor of any of them, components, equipment, materials, or other goods or services, that relate to a licensee's, certificate holder's, quality assurance program approval holder's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 71.11.

26. Section 71.11 is added to read as follows:

* * * * *

§ 71.11 Deliberate misconduct.

(a) This section applies to any—

- (1) Licensee;
- (2) Certificate holder;
- (3) Quality assurance program approval holder;
- (4) Applicant for a license, certificate, or quality assurance program approval;
- (5) Contractor (including a supplier or consultant) or subcontractor, to any person identified in paragraphs (a)(1) through (a)(4) of this section; or
- (6) Employee of any person identified in paragraphs (a)(1) through (a)(5) of this section.

(b) A person identified in paragraph (a) of this section who knowingly provides to any entity, listed in paragraphs (a)(1) through (a)(5) of this section any components, materials, or other goods or services that relate to a licensee's, certificate holder's, quality assurance program approval holder's or applicant's activities subject to this part may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate holder, quality assurance program approval holder, or any applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license, certificate or approval issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, a certificate holder, quality assurance program approval holder, an applicant for a license, certificate or quality assurance program approval, or a licensee's, applicant's, certificate

holder's or quality assurance program approval holder's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(c) A person who violates paragraph (b)(1) or (b)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(d) For the purposes of paragraph (b)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee, certificate holder, quality assurance program approval holder or applicant for a license, certificate, or quality assurance program approval to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license or certificate issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate holder, quality assurance program approval holder, applicant, or the contractor or subcontractor of any of them.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

27. 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. 295 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. (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).

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. 935 (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, 96 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

28. In § 72.2, paragraph (f) is revised to read as follows:

§ 72.2 Scope.

* * * * *

(f) This part also gives notice to all persons who knowingly provide to any licensee, certificate holder, applicant for a license or certificate, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, certificate holder's, or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 72.12.

29. Section 72.12 is revised to read as follows:

§ 72.12 Deliberate misconduct.

(a) Any licensee, certificate holder, applicant for a license or certificate, employee of a licensee, certificate holder, or applicant for a license or certificate; or any contractor (including a supplier or consultant) or subcontractor, employee of a contractor or subcontractor of any licensee, certificate holder, or applicant for a license or certificate who knowingly provides to any licensee, certificate holder, applicant for a license or certificate, contractor, or subcontractor, any components, materials, or other goods or services that relate to a licensee's, certificate holder's, or applicant's activities subject to this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate holder or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license or certificate issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, a certificate holder, an applicant for a license or certificate, or a licensee's, applicant's, or certificate holder's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee, certificate holder or applicant for a license or certificate to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license or certificate issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate holder, applicant, contractor, or subcontractor.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

30. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42 (a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

31. In § 110.1, paragraph (a) is revised to read as follows:

§ 110.1 Purpose and scope.

(a) The regulations in this part prescribe licensing, enforcement, and rulemaking procedures and criteria, under the Atomic Energy Act, for the export of nuclear equipment and material, as set out in §§ 110.8 and 110.9, and the import of nuclear equipment and material, as set out in § 110.9a. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or

subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 110.7b.

32. Section 110.7b is revised to read as follows:

§ 110.7b Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

33. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

34. Section 150.2 is revised to read as follows:

§ 150.2 Scope.

The regulations in this part apply to all States that have entered into agreements with the Commission or the Atomic Energy Commission pursuant to subsection 274b of the Act. This part also gives notice to all persons who knowingly provide to any licensee, applicant for a license or certificate or quality assurance program approval, holder of a certificate or quality assurance program approval, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's, quality assurance program approval holder's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of §§ 30.10, 40.10, 70.10 and 71.11.

Dated at Rockville, Maryland, this 6th day of January, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98-755 Filed 1-12-98; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-ANE-41-AD; Amendment 39-10231; AD 97-25-07]

RIN 2120-AA64

Airworthiness Directives; GE Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to GE Aircraft Engines (GE) CT7 series turboprop engines, that currently requires eddy current inspection (ECI) of disk holes of stage 1 and 2 gas generator turbine (GGT) disks for cracks, and, if necessary, replacement with serviceable parts. This amendment increases the initial cyclic compliance threshold while decreasing the calendar time for performing the ECI. This amendment is prompted by corrections to the applicable alert service bulletin (ASB) serial number (S/N) tables. The ASB contained S/Ns which appeared in more than one table creating confusion over which cyclic limit applied to each S/N. The actions specified by this AD are intended to prevent a stage 1 or 2 GGT disk failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective January 28, 1998.

The incorporation by reference of GE (CT7-TP Series) Service Bulletin 72-390, Revision 1, dated December 11, 1996, was previously approved by the Director of the Federal Register as of April 15, 1997 (62 FR 15094, March 31, 1997).

The incorporation by reference of GE (CT7-TP Series) Alert Service Bulletin A72-393, Revision 1, dated February 13, 1997, is approved by the Director of the Federal Register as of January 28, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-ANE-41-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from GE Aircraft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (781) 594-3140, fax (781) 594-4805. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine

and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7146, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: On February 24, 1997, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 97-05-12, Amendment 39-9956 (62 FR 15094, March 31, 1997), applicable to General Electric Aircraft Engines (GE) CT7 series turboprop engines, to require a one-time eddy current inspection (ECI) for cracks of disk holes of stage 1 and 2 gas generator turbine (GGT) disks, and, if necessary, replacement with serviceable parts. That action was prompted by a report of a GE CT7 series turboprop engine, installed on a SAAB-SCANIA SF340 aircraft, that experienced an uncontained stage 2 GGT failure during takeoff. The investigation revealed that the failure was caused by a crack in a disk cooling hole. The most likely cause of the cracking was machining damage to the disk cooling hole during manufacturing. That condition, if not corrected, could result in a stage 1 or 2 GGT disk failure, which could result in an uncontained engine failure and damage to the aircraft.

This amendment is prompted by a revision to the applicable alert service bulletin (ASB) that provides corrections to the serial number (S/N) tables. The ASB contained S/Ns which appeared in more than one table creating confusion over which cyclic limit applied to each S/N. This amendment supersedes the existing AD and increases the initial cyclic compliance threshold while decreasing the calendar time for performing the ECI. The compliance times have been adjusted to ensure that no part exceeds the cyclic limits nor the compliance end date as calculated by GE's risk analysis.

The FAA has reviewed and approved the technical contents of GE (CT7-TP Series) ASB A72-393, Revision 1, dated February 13, 1997, that lists by S/N affected stage 1 and 2 GGT disks, and GE (CT7-TP Series) Service Bulletin 72-390, Revision 1, dated December 11, 1996, that describes procedures for ECI of disk holes for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 97-05-12 to increase the initial cyclic compliance threshold while decreasing the calendar time for performing the ECI. The actions are required to be accomplished in accordance with the service documents described previously.

Since a situation exists that requires the immediate adoption of this