PART 13: COMPLIANCE ENFORCEMENT

13.1 Purpose and Scope.

13.1.1 Authority.

Rules and regulations set forth herein are adopted pursuant to the provisions of sections 25-1-108, 25-1-5-101(K), 25-1-5-101(L), and 25-11-104, 25-11-107(5), CRS.

13.1.2 Basis and Purpose.

A statement of basis and purpose accompanies this part and changes to this part. A copy may be obtained from the Department.

13.1.3 Scope.

This Part sets the criteria and specific procedures for notification of violations and the imposition of administrative penalties under 25-11-107(5), CRS.

13.1.4 Applicability.

Except as otherwise specifically provided, these regulations apply to all persons who receive, possess, own, acquire, use, process, store, transfer, or dispose any source of radiation; provided, however, that nothing in these regulations shall apply to any person to the extent such person is subject to regulation by the NRC.  

1 Attention is directed to the fact that regulation by the state of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the U.S. Nuclear Regulatory Commission and to 10 CFR Part 150 (January 1, 2007) of the commission’s regulations.

13.1.5 Published Material Incorporated By Reference.

Published material incorporated in Part 1 by reference is available in accord with Section 1.4.

13.2 Definitions.

13.2.1 "Administrative penalty" means a monetary penalty levied by the Department against a licensee or registrant because of a violation of a statute, rule, license, or registration certificate. Administrative penalty does not include any civil penalty levied by a court under section 25-11-107(4) or any criminal penalty levied under section 25-1-114 or 25-11-107(3), CRS.

13.2.2 "Civil Penalty" means a monetary penalty levied by a court against a licensee or registrant because of a violation of a statute, rule, license, or registration certificate. Civil penalty does not include any criminal penalty levied under 25-1-114 or 25-11-107, CRS.
13.2.3 "Material false statement" means a statement that is false by omission or commission and is relevant to the regulatory process.

13.3 Penalties

13.3.1 Any person who violates any license or registration provision of 25-11-103 or 25-11-104, CRS, regulation, or any license or registration certificate condition, regulation or order issued thereunder shall be subject to an administrative penalty not to exceed fifteen thousand dollars per day for each violation.

13.4 Exemptions

13.4.1 An administrative penalty will not generally be assessed for a violation which was unavoidable to prevent loss of life, personal injury or severe property damage or there were no feasible alternatives, and provided that proper notification was provided to the Department.

13.4.2 An administrative penalty will not generally be assessed for violations resulting from matters beyond the control of the licensee or registrant, such as equipment failures that were unavoidable by reasonable quality assurance measures or management controls.

13.4.3 An administrative penalty will not generally be assessed if interlocks are bypassed for short periods for maintenance or for quality control procedures provided that alternative safety procedures are implemented.

13.5 Notification and Imposition

13.5.1 If the Department has reason to believe, based upon facts available to the Department, that a person has committed any violation of any licensing or registration provision of 25-11-103 or 25-11-104, CRS, regulation, any license or registration certificate, or order issued thereunder, it shall notify such person within a reasonable time specifying:

13.5.1.1 The date and factual basis of each act or omission with which such person is charged;

13.5.1.2 The particular provision of the statute, rule, regulation, order, license, or registration certificate violated; and

13.5.1.3 Necessary actions required to bring the licensee or registrant into compliance.

13.5.2 The notification required by 13.5.1 shall be sent by the Department by certified or registered mail, return receipt requested, to the last known address of the alleged violator or the Department shall personally serve the notice of the violation upon the alleged violator or the alleged violator's agent. Any notice may be served by the Department by publication in a newspaper of general circulation in the area of the licensed facility or activity that is the subject of the notice, if the Department's efforts to serve by mail are unsuccessful. Service shall not be incomplete due to any refusal to accept service.

13.5.3 The alleged violator shall have thirty (30) days following the receipt or publication of the notice to submit a written response containing data, views, and arguments concerning the alleged violations and proposing a reasonable time for abatement. In addition, the alleged violator may request an informal conference with Department personnel within fifteen days after receiving the notice to discuss the alleged violations. Such conference is to be held within the thirty (30) days allowed for a written response.
13.5.4 After consideration of any written response and informal conference, the Department shall issue a letter within thirty days after the date of the informal conference or the receipt of a written response, whichever is later, affirming or dismissing or otherwise disposing of the violation. Any remaining corrective measures that are necessary, and any administrative penalty determined to be appropriate, will be incorporated into an administrative order.

13.5.4.1 The time for abatement shall be that reasonably necessary to achieve compliance given the severity of the violation and the actions necessary to correct the violation.

13.5.4.2 The order may be modified and the time for abatement extended for good cause shown.

13.5.4.3 Immediate abatement may be ordered to the extent necessary to remove an imminent danger to public health, worker safety or the environment.

13.5.5 For any person subject to an administrative penalty as specified in 13.3.1, the amount of the penalty will be determined in accordance with the provisions of 25-11-107, CRS. The factors contained in 13.5.5.1 and 13.5.5.3 will be used to determine the severity of the violation and establish the base penalty amount. The factors contained in 13.5.5.2, 13.5.5.4 and 13.5.5.5 are aggravating factors and may be applied with other factors to increase the penalty amount. The factors contained in 13.5.5.7, 13.5.5.8, and 13.5.5.9 are mitigating factors and may be applied with other factors to reduce any administrative penalty. The factor contained in 13.5.5.10 may be an aggravating or mitigating factor and may be used to increase or decrease the penalty amount as determined by the department. The economic benefit factor in 13.5.5.6 will be added to the adjusted penalty to reach the final penalty amount. The existence of multiple violations and the duration of the violation(s) will be considered in assessing a final administrative penalty.

13.5.5.1 the seriousness of the violation;

13.5.5.2 whether the violation was intentional, reckless, or negligent;

13.5.5.3 the impact on, or threat to, the public health or the environment as a result of the violation;

13.5.5.4 the degree of recalcitrance, if any, on the part of the violator;

13.5.5.5 whether the violator is a recidivist;

13.5.5.6 the economic benefit realized by the violator as a result of the violation;

13.5.5.7 the violator's voluntary, timely, and complete disclosure of the violation, if prior to the department's knowledge of the violation, and if all reports required pursuant to state environmental control laws have been submitted as required;

13.5.5.8 the violator's full and prompt cooperation with the department following disclosure or discovery of a violation, including, when appropriate, entering into and implementing, in good faith, a legally enforceable agreement with the department to undertake compliance and remediation efforts;

13.5.5.9 the existence of a comprehensive regulatory compliance program or an audit program that the violator adopted in good faith and in a timely manner, which program includes measures determined by the department to be sufficient to identify and prevent future noncompliance; and
13.5.5.10 any other aggravating or mitigating circumstance.

13.5.6 The Department may compromise, mitigate, or remit any such administrative penalty as justified by written documentation. The department may enter into a settlement agreement regarding any administrative penalty or claim. The settlement agreement may include payment or contribution of moneys to state or local agencies for other environmentally beneficial purposes.

13.5.7 The letter or order specified in 13.5.4 shall notify the alleged violator of the right to request a hearing within thirty (30) days, such hearing to be held in accordance with 24-4-105, CRS., to determine all of the following:

13.5.7.1 Whether the alleged violation exists or did exist;

13.5.7.2 Whether the actions taken or to be taken are or will be adequate to correct the violation;

13.5.7.3 Whether the time set for abatement was reasonable; and

13.5.7.4 Whether the administrative penalty is reasonable in light of the statutory criteria upon which it is based.

13.5.8 Upon the request for such a hearing, the order shall be stayed pending the results of the hearing and any subsequent judicial review.

13.5.8.1 The alleged violator shall address each alleged violation in the request for the hearing and shall specify which of the alleged violations the alleged violator is appealing. An allegation not addressed in the request for the hearing shall be deemed admitted.

13.5.8.2 No person engaged in conducting the hearing or participating in a decision or an initial decision shall be responsible for or subject to the supervision or direction of any Department employee engaged in the performance of an investigatory or prosecuting function for the department.

13.5.8.3 The final action of the Department is subject to judicial review pursuant to section 24-4-106, CRS.

13.5.9 At the request of the Department, the Attorney General may institute a civil action to collect any civil or administrative penalty imposed pursuant to these regulations.

EDITOR’S NOTES

6 CCR 1007-1 has been divided into separate parts for ease of use. Versions prior to 04/01/2007 are located in the first section, 6 CCR 1007-1. Prior versions can be accessed from the All Versions list on the rule’s current version page. To view versions effective on or after 04/01/2007, select the desired part of the rule, for example 6 CCR 1007-1 Part 01 or 6 CCR 1007-1 Part 10.

History

Part 13 – 13.5.9 eff. 04/30/2011.