

continue, RX 10, at 1, is a sham and not a legitimate effort to control diversion.

Respondent's failure to enforce its own policies provides reason alone to conclude that it cannot be trusted to adhere to compliance conditions. This conclusion is further supported by Respondent's sustained and flagrant violations of Federal law, as well as its attempt to circumvent the suspension order. Indeed, as Respondent's history amply demonstrates, its professed commitment to "teamwork" and "to become a compliance model for the entire industry," Resp. Ex. at 139, cannot be taken seriously.<sup>58</sup> I therefore conclude that imposing compliance conditions would not adequately protect the public interest, and reject the ALJ's recommendation.<sup>59</sup>

### Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, 003563NSY, issued to Novelty Distributors, D/B/A/ Greenfield Labs, be, and it hereby is, revoked. I further order that any pending application of Novelty Distributors, D/B/A Greenfield Labs, for renewal of its registration, be, and it hereby is, denied. This order is effective immediately.

Dated: September 3, 2008.

**Michele M. Leonhart,**  
Deputy Administrator.

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**BILLING CODE 4410-09-P**

<sup>58</sup> For the same reasons, I find unpersuasive the August 13, 2008 letter from Respondent's President.

<sup>59</sup> Respondent raises a plethora of claims that the Agency or its personnel have violated its rights under the First and Fifth Amendments, as well as statutory provisions including the Administrative Procedure Act, the Data Quality Act, and 21 U.S.C. 880. See Resp. Br. at 114-39. For example, Respondent asserts that the DIs violated its First Amendment rights and engaged in a prior restraint because they refused to allow its executives to videotape them as they reviewed Respondent's records. See *id.* at 116. It also alleges that a DI committed an assault and battery during the inspection when he grabbed a video recorder from the hands of one of its executives who was attempting to set up the camera in order to tape the investigators while they reviewed Respondent's records.

While in my order denying Respondent's interlocutory appeal, I adhered to settled Agency precedent that the exclusionary rule does not apply in these proceedings, ALJ Ex. 13, at 3; Respondent now contends that I should discount the testimony of two DIs who participated in the inspection to deter future violations. Indeed, Respondent even contends that I should discount the testimony of these DIs based on the alleged assault and battery of the third DI, who did not testify at the hearing.

Having considered the legal and factual bases for each of Respondent's claims, I conclude that none of them presents a substantial question as to the fundamental fairness of this proceeding and none warrants further discussion.

## DEPARTMENT OF LABOR

### Office of the Secretary; Submission for OMB Review: Comment Request

September 5, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503. Telephone: 202-395-7316/Fax: 202-395-6974 (these are not toll-free numbers), E-mail: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

*Type of Review:* Extension without change of a previously approved collection.

*Title of Collection:* Slings (29 CFR 1910.184).

*OMB Control Number:* 1218-0223.

*Affected Public:* Private Sector.

*Estimated Number of Respondents:* 1,000,000.

*Estimated Total Annual Burden Hours:* 17,760.

*Estimated Total Annual Costs Burden:* \$0.

*Description:* The provisions of the standard require that the employer make a periodic inspection of alloy steel chain slings at least once a year and to make and maintain a record of the inspection. It also requires the employer to ensure that each new, repaired or reconditioned alloy steel chain sling is proof tested and a certification record maintained. In addition, the standard requires the employer to maintain a record of the proof test on wire rope slings. For additional information, see related 60-day preclearance notice published at 73 FR 35412 on June 23, 2008. PRA documentation prepared in association with the preclearance notice is available on <http://www.regulations.gov> under docket number OSHA 2008-0020.

Agency: Occupational Safety and Health Administration.

*Type of Review:* Extension without change of a previously approved collection.

*Title of Collection:* Forging Machines (29 CFR 1910.218).

*OMB Control Number:* 1218-0228.

*Affected Public:* Private Sector.

*Estimated Number of Respondents:* 27,700.

*Estimated Total Annual Burden Hours:* 187,264.

*Estimated Total Annual Costs Burden:* \$0.

*Description:* The Standard requires employers to establish periodic inspections of forging machines, guards, and point-of-operation protection devices and to mark manually controlled valves and switches. These requirements reduce employees' risk of death or serious injury by ensuring that forging machines used by them are in safe operating condition, and that they are able to identify manually operated valves and switches. For additional information, see related 60-day preclearance notice published at 73 FR 35414 on June 23, 2008. PRA documentation prepared in association with the preclearance notice is available

on <http://www.regulations.gov> under docket number OSHA 2008-0018.

**Darrin A. King,**

*Departmental Clearance Officer.*

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## NUCLEAR REGULATORY COMMISSION

[NRC-2008-0486]

### NRC Enforcement Policy: Extension of Discretion Period of Interim Enforcement Policy

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Policy statement: Revision.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is revising the NRC "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues" (Title 10 of the *Code of Federal Regulations* (10 CFR) 50.48 "Fire Protection"), which will allow a licensee the option to request an extended enforcement discretion period if they are pursuing transition to 10 CFR 50.48(c), "National Fire Protection Association Standard NFPA 805."

**DATES:** This revision is effective September 10, 2008. Please submit any comments on this revision to the Enforcement Policy on or before October 27, 2008.

**ADDRESSES:** You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

*Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0486]. Address questions about NRC dockets to Carol Gallagher, 301-415-5905; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*Mail comments to:* Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., on Federal workdays.

You can access publicly available documents related to this document using the following methods:

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

The NRC maintains the current Enforcement Policy on its Web site at <http://www.nrc.gov>. Mouse over "Public Meetings and Involvement" on the far right, then select "Enforcement" from the drop-down menu. Under the bolded "Comments" section select "Enforcement Policy".

#### FOR FURTHER INFORMATION CONTACT:

Cynthia Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 301-415-2741, e-mail [Cynthia.Carpenter@nrc.gov](mailto:Cynthia.Carpenter@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On June 16, 2004 (69 FR 33536), the NRC published a final rule in the **Federal Register** amending 10 CFR 50.48, "Fire Protection." This rule became effective July 16, 2004 and allows licensees to adopt 10 CFR 50.48(c), a risk-informed, performance-based alternative to their current fire protection requirements in 10 CFR 50.48(b). The NRC revised its Enforcement Policy (June 16, 2004; 69 FR 33684) to provide interim enforcement discretion during a "transition" period. The interim enforcement discretion policy includes provisions to address the noncompliance identified during the licensee's transition process and existing identified noncompliances.

The discretion period would start when the licensee informs the NRC of a transition start date in a Letter of Intent (LOI) to transition to the National Fire Protection Association Standard 805 (NFPA 805). The discretion period would remain in effect for up to two years for the licensee to submit to the NRC a License Amendment Request

(LAR) to transition to NFPA 805, and the discretion period would continue until the NRC dispositioned the LAR. Many licensees requested 3 or more years for the transition period. The basis for the extended discretion included the following: (1) The need for additional time to properly evaluate existing fire analysis; (2) a lack of resources; (3) the need for additional time to develop fire probabilistic risk assessments (PRAs); and (4) the need for additional time to use lessons learned from the pilot plants. On April 18, 2006 (71 FR 19905), the NRC revised the Interim Enforcement Policy to extend the enforcement discretion period from two to three years.

On February 2, 2007, the Nuclear Energy Institute (NEI) submitted a request for additional discretion for sites transitioning to NFPA 805 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML070460550). NEI stated that the extension of the enforcement discretion period would allow an orderly transition process.

NEI states transitioning licensees are compelled to complete portions of the transition in advance of the pilot plants due to the enforcement discretion deadline. This could result in creating substantial risk of rework and inconsistency among the transitioning licensees. The following issues formed the base for NEI's request that the staff reexamine the Interim Enforcement Policy:

(1) Timing of the pilots schedule versus the nonpilot plant discretion deadline.

(2) Delay of the industry fire PRA standard and the NEI peer review guidance.

(3) Limited fire PRA expertise available.

(4) Burden on NRC staff to conduct timely reviews of concurrent LARs.

The NRC is revising the Enforcement Policy to extend, on a case-by-case basis, the current 3-year enforcement discretion period. The NRC will grant additional time extensions depending on the progress the licensee has made in the transition effort. The additional period of discretion would end 6 months after the date of the safety evaluation approving the second pilot plant LAR review.

Nuclear safety is the first consideration in any request for additional enforcement discretion. NRC requires all transitioning licensees to fully maintain their approved fire protection program. Transitioning licensees must address all nonconforming conditions with adequate compensatory measures to