

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
WASHINGTON, D.C. 20555-0001

April 2, 2001

**NRC REGULATORY ISSUE SUMMARY 2001-10
REVISIONS TO STAFF GUIDANCE ON NOTICES OF ENFORCEMENT
DISCRETION**

ADDRESSEES

All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to notify addressees that NRC Inspection Manual Part 9900, "Technical Guidance - Notice of Enforcement Discretion" has been revised to clarify the differences between "regular" and "severe weather" Notice of Enforcement Discretions (NOEDs) and to transmit a copy of the revised version. This RIS supersedes Administrative Letter 95-05, Rev. 2, dated July 27, 1999, and RIS 2000-15, dated September 7, 2000, on the same subject. No specific action or written response is required.

BACKGROUND INFORMATION

The NRC expects all nuclear power plant licensees to operate their facilities safely and in compliance with NRC regulations, the plant license, the technical specifications (TSs), and other requirements. Nevertheless, unusual circumstances may occur in which strict compliance with an NRC requirement could result in an inappropriate system alignment, an unnecessary plant transient, or unnecessary delays in certain preplanned activities such as plant startup, testing, or inspection. In these circumstances, licensees may request that the NRC exercise discretion and refrain from enforcing applicable TSs before a violation occurs. This type of enforcement discretion is implemented through an NOED, as described in Section VII.C of the Enforcement Policy. The NRC will issue an NOED only when it is clear that such an action is consistent with the agency's mission to protect public health and safety. The NRC's "General Statement of Policy and Procedures for NRC Enforcement Actions (Enforcement Policy)," published as NUREG-1600, includes the NRC policy for granting or denying requests for NOEDs.

On rare occasions, such as during severe weather conditions, another government agency or other responsible entity may issue an advisory assessment regarding the need for electrical power to protect public (non-radiological) health and safety. In these situations, licensees may request an NOED and the staff may grant it. In evaluating the need for an NOED, the staff weighs the public health and safety or common defense and security implications of shutting down a power plant against the potential radiological or other hazards associated with

continued operation of the plant. The staff must make a determination that safety will not be impacted unacceptably by exercising this discretion while the plant is not in strict conformance with all license requirements.

The NRC staff believes that this regulatory mechanism is needed to address unforeseen, temporary situations in which strict compliance is neither the appropriate nor the safest course to follow and no other suitable regulatory approach is available. A valid NOED request that satisfies the established criteria does not reflect negatively on a licensee unless the licensee planned poorly or failed to take appropriate corrective action in a timely manner.

DISCUSSION

Significant changes to the NOED guidance are as follows:

1. The difference between “regular NOEDs” and “severe weather or other natural phenomena NOEDs” is clarified. Note that Section VII.C of the Enforcement Policy refers to “severe weather or other natural phenomena” as the initiating cause of the second category of NOEDs. The revised Part 9900 guidance attached to this RIS refers to “severe weather or other external conditions” as the initiating cause of the second category of NOEDs. This terminology is not consistent with that in the Enforcement Policy. The correct definition is “severe weather or other natural phenomena”. The staff will resolve this inconsistency between the Enforcement Policy and the Part 9900 guidance.

Regular NOEDs are appropriate where compliance with the license would involve plant-related risks of an unnecessary transient which may adversely affect the radiological health and safety of the public. NOEDs for severe weather or other natural phenomena involve general (as opposed to radiological) public health and safety considerations (i.e., need for power or grid stability). Regardless of the reason for an NOED request, if the NOED is required to avoid an unnecessary transient, it should be considered as a regular NOED. Thus the difference between the two types of NOEDs is based on the effects of the condition, not on the reason for the NOED request, as illustrated by the following examples.

In the first example, a licensee may request an NOED to avoid having to shut down the reactor because the ultimate heat sink temperature has exceeded TS limits as a result of a prolonged heat spell. The grid is stable. In this case, notwithstanding that the situation was caused by severe weather, the heat sink is in a degraded condition and the NOED is needed to avoid the transient associated with a required shutdown. Thus, it would be considered a “regular” NOED. As a second example, consider a scenario during a period of severe weather accompanied by power grid instability when a licensee discovers that a TS-required surveillance, normally performed with the plant shut down, was not conducted, putting the plant into an action statement. Conducting the surveillance at power carries a significant risk of tripping the reactor, which would aggravate the fragile grid situation, as would shutdown of the plant to do the surveillance. In this case, the licensee may request a severe weather NOED to allow continued operation of the facility, and deferral of the required surveillance until the weather and grid problems have abated.

2. Expectations regarding a licensee's request for an NOED and the NRC staff's processing of NOED requests are clarified.

A dependable source of electrical power is a vital element of the North American economic and social infrastructure. Other critical elements of this infrastructure rely on the availability of a dependable source of electrical power to remain viable. This reliance is particularly significant during severe weather conditions when the demand for power is high. Any potential noncompliance with the facility license that could result in an unexpected plant shutdown during severe weather conditions could adversely impact public health and safety. Continued safe operation of nuclear power plants during severe weather conditions is an essential element of maintaining a stable and reliable electrical power supply system.

It is prudent for licensees to take appropriate preventive measures to minimize the possible need for NOEDs when such conditions develop. Weather-related NOED requests usually involve a missed surveillance, an improperly scheduled surveillance, or inoperable equipment. Keeping required surveillances current or scheduled and completed well before anticipated severe weather conditions develop will help to avoid the need for NOED requests. Periodic walkdown inspections and other similar preventive measures also help to minimize the need for NOEDs.

Through periodic communications with other government agencies, the North American Electric Reliability Council, and independent system operators, both the NRC staff and licensees are able to stay aware of actual and potential severe weather conditions and power demands. Therefore, severe weather conditions should not surprise licensees or the NRC staff. However, in spite of reasonable efforts that a licensee may make, unanticipated situations do arise and an NOED may be necessary for continued operation of a facility. When the need for an NOED request becomes apparent, licensees are encouraged to promptly give the NRC staff complete and relevant information, as described in NRC Inspection Manual Part 9900. This will permit the staff to mobilize appropriate resources so that NOED requests can be processed quickly. Inspection Manual Part 9900 also provides guidance on contacting appropriate staff personnel during business and nonbusiness hours to evaluate NOED requests.

3. Additional time is allowed for licensees to provide written documentation and for the staff's written approval.

Typically, licensees request an NOED orally. Licensees should follow up oral regular NOED requests with written requests within 2 working days. Because the staff must expeditiously inform the Commission of NOEDs involving severe weather or other natural phenomena, a written NOED request should be provided within a few hours of the oral request. Whenever an NOED request involves a followup license amendment, the licensee's written NOED request should include a followup license amendment application. The staff's written NOED authorization should be issued within 2 working days of the licensee's written request.

4. NRC's Office of Enforcement (OE) will post the staff's NOED approval or denial letter on the NRC public web page (www.nrc.gov/OE) for easy public access.

5. Other editorial changes have been made for better organization and readability of the guidance.

BACKFIT DISCUSSION

This regulatory issue summary requires no action or written response. Recommended licensee actions are voluntary. Consequently, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

The staff did not publish a notice of opportunity for public comment in the *Federal Register* because this regulatory issue summary is informational and pertains to a staff procedure. The policy that the procedure implements was published in the *Federal Register* and the NRC staff considered all of the comments it received.

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not request any information collection.

Please contact the lead project manager listed below if there are any questions about this matter.

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Attachments:

1. NRC Inspection Manual Part 9900 - Technical Guidance
Notices of Enforcement Discretion
2. List of Recently Issued Regulatory Issue Summaries

5. Other editorial changes have been made for better organization and readability of the guidance.

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LIST OF RECENTLY ISSUED
NRC REGULATORY ISSUE SUMMARIES

Regulatory Issue Summary No.	Subject	Date of Issuance	Issued to
2001-09	Control of Hazard Barriers	04/02/2001	All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel
2001-08	Operating Reactor Licensing Action Estimates	04/02/01	All power reactor licensees
2000-11, Supp. 1	NRC Emergency Telecommunications System	03/22/01	All holders of operating licenses for nuclear power reactors
2001-07	10 CFR 50.75(f)(1) Reports on the Status of Decommissioning Funds (Due March 31, 2001)	02/23/01	All holders of operating licenses for nuclear power reactors
2001-06	Criteria for Triggering a Review Under 10 CFR 50.80 for Non-Owner Operator Service Companies	02/15/01	All holders of operating licenses for nuclear power reactors
2001-05	Guidance on Submitting Documents to the NRC by Electronic Information Exchange or on CD-ROM	01/25/01	All holders of operating licenses for nuclear reactors and all vendors who are required to make submittals to the U.S. Nuclear Regulatory Commission (NRC) pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50), "Domestic Licensing of Production and Utilization Facilities."
2001-04	Issuance of Updated Guidance on the Transfer of Ownership or Control of Licensed Activities (NUREG-1556, Volume 15)	01/24/01	All material and fuel cycle licensees.

OPERATIONS - NOTICES OF ENFORCEMENT DISCRETION

A. PURPOSE

This document provides guidance to staff in the Regional Offices and the Office of Nuclear Reactor Regulation (NRR) on the process for the NRC to exercise enforcement discretion with regard to limiting conditions for operation (LCO) in power reactor Technical Specifications (TS) or other license conditions. This type of discretion is addressed in Section VII.C of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy, NUREG-1600) and is designated as a Notice of Enforcement Discretion (NOED). An NOED can be issued for a power reactor at power, in startup, or in shutdown, provided the specific applicable criteria set forth below are met. This guidance is not applicable to non-power or permanently shutdown reactors. NOEDs may be warranted if compliance with a TS LCO or with other license condition would involve:

- (1) an unnecessary plant transient, or
- (2) performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or
- (3) unnecessary delays in plant startup without a corresponding health and safety benefit, or
- (4) exacerbation of an already degraded electrical grid during and following severe weather or other external conditions that could have an adverse impact on the overall health and safety of the public.

The NOED process is designed to address temporary nonconformances with license conditions and TS only, and is not appropriate for nonconformances with regulations, Updated Final Safety Analysis Reports (UFSARs), or codes. Exemptions from regulations, non-compliance with UFSARs, and reliefs from codes must be processed in accordance with the provisions of Title 10 Code of Federal Regulations (10 CFR) Parts 50.12, 50.59 or 50.55a, respectively. Nonconformance with regulations, UFSARs, or codes normally do not, in themselves, require immediate shutdown. In such situations, the licensee must perform a prompt safety assessment of the noncompliance and make an appropriate operability determination. The licensee should further determine what other NRC requirements apply to the situation, e.g., 10 CFR Part 50, Appendix B, Criterion XVI, 10 CFR 50.12, etc. and take the required actions. Generic Letter (GL) 91-18, "Information to Licensees Regarding NRC Inspection Manual Sections on Resolution of Degraded and Nonconforming Conditions," and associated NRC Inspection Manual Chapter Part 9900 provide staff guidance for addressing such circumstances.

When an NOED is granted, it is recognized that the operating license will be violated, but the NRC is exercising its discretion not to enforce compliance with the operating license for a specified time period. In all cases, appropriate enforcement actions consistent with the NRC's Enforcement Policy should be considered for the root causes leading to the need for the NOED.

B. CRITERIA

1.0 General Considerations

A licensee may depart from its TS in an emergency, pursuant to the provisions of 10 CFR 50.54(x), without prior NRC approval, when it must act immediately to protect the public health and safety. However, situations occur occasionally that are not addressed by the provisions of 10 CFR 50.54(x), and for which the NRC's exercise of enforcement discretion may be appropriate. Provided that the licensee has not abused the emergency provisions of 10 CFR 50.91 by failing to apply for an amendment in a timely manner, it is appropriate that the NRC have the NOED procedure for expeditious notice to a licensee of NRC's intention to exercise enforcement discretion under limited circumstances.

The NRC staff expects to issue NOEDs infrequently. Although requirements may dictate that a plant must be shut down, refueling activities suspended, or plant startup delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to issue an NOED. The decision to forego enforcement action is discretionary. An NOED is to be issued only if the NRC staff is clearly satisfied that such action is warranted from a public health and safety standpoint. An NOED should be granted on a case-by-case basis, considering the individual plant circumstances. If appropriate, the staff should perform a qualitative probabilistic risk assessment as an input to its decision process. Typically, this would involve a joint effort by the regional Senior Reactor Analyst and the NRR's Probabilistic Safety Assessment Branch. If the NRC decides not to issue an NOED, the licensee must take the action required by the TS (except as stated in 10 CFR 50.54(x)). In addition, if a Licensee Event Report (LER) is required by 10 CFR 50.73 as a result of the non-conformance, the licensee must submit that LER, notwithstanding the staff's issuance of an NOED.

Careful regulatory scrutiny should be given to any deviation from the required actions of the TS or other license conditions for circumstances involving violations, poor planning, repeated NOED requests for the same reasons, or some similarly avoidable situation. To prevent abuse, and because of the lack of up-front public notice and participation in the NOED process, the staff will apply criteria similar to those in 10 CFR 50.91 to verify that the exigency was unavoidable.

2.0 Types of NOEDs

There are two types of NOEDs: (1) "regular" NOEDs and (2) severe weather-or other external condition-related NOEDs. Regular NOEDs are appropriate where forced compliance with the license would involve plant-related risks due to an unnecessary transient which may affect the radiological health and safety of the public. Severe weather or other external condition-related NOEDs involve general (as opposed to only radiological) public health and safety considerations (i.e., need for power or grid stability). It should be noted that, regardless of the initiating cause for an NOED request, if the NOED is required for avoiding an unnecessary transient, it should be considered as a regular NOED. (e.g. Severe hot weather conditions result in exceeding the TS temperature limit for the Ultimate Heat Sink (UHS). TS requires the plant to be in MODE 3 within 6 hours, and in MODE 5 within 36 hours. The

grid condition is stable. The licensee requests an extension to 72 hours for restoring compliance with TS limits for UHS. The licensee's request for an NOED is not based on the need for power or grid reliability. The staff should evaluate this condition as a regular NOED. Alternately, if the NOED request is based on considerations of the need for power or grid stability, it should be considered as a "severe weather or other external condition" NOED.) Thus the differentiation between the two types of NOEDs is based on the effects of the condition and not on the cause leading to the NOED request. The two types of NOEDs are further addressed in the following sections.

2.1 Situations Affecting Radiological Safety - Regular NOEDs

Granting of this type of an NOED shall not involve an increase in radiological risk. The following are NOED criteria applicable for various plant conditions:

1. For an operating plant, the NOED is intended to:
 - a. avoid undesirable transients as a result of forcing compliance with the license condition and, thus, minimize potential safety consequences and operational risks or
 - b. eliminate testing, inspection, or system realignment that is inappropriate for the particular plant conditions.
2. For plants in a shutdown condition, the NOED is intended to reduce shutdown risk by avoiding testing, inspection, or system realignment that is inappropriate for the particular plant conditions, in that it does not provide an overall safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.
3. For plants attempting to start up,¹ the need for an NOED is expected to occur less often than for operating plants, because delaying startup does not usually leave a plant in a condition in which it could experience undesirable transients. Thus, the issuance of NOEDs for plants attempting to start up must meet a higher threshold, as described below. NOEDs for plants attempting to start up are to be exercised only when the licensee considers and the NRC staff has concluded that:
 - a. The equipment or system does not perform a safety function in the mode in which operation is to occur (e.g., a TS which requires the equipment to be operable in a mode not required by the UFSAR); or,
 - b. The safety function performed by the equipment or system is of only marginal safety benefit, and remaining in the

¹ For purposes of this guidance, "startup" is defined as any condition with the reactor being in other than "operation" in Mode 1 or cold shutdown.

current mode increases the likelihood of an unnecessary plant transient or,

- c. The TS or other license conditions require a test, inspection, or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The letter issuing an NOED should specifically address which of the above three criteria were satisfied. If the criteria, as described above, are not satisfied, the licensee must comply with the license requirements until a license amendment is requested and issued.

2.2 Situations Arising from Severe Weather or Other External Conditions

In granting this type of an NOED, a small increase in plant radiological risk is acceptable.

In unusual situations, severe weather or other natural events may result in a government entity or a responsible independent entity (such as a regional power authority) making the assessment that the need for power and immediate overall public (non-radiological) health and safety considerations constitute an emergency situation. Such situations are expected to occur rarely. The licensee must provide the name, organization and telephone number of the official in the government or independent entity that made the emergency assessment. If deemed necessary, the staff may contact the appropriate official to independently verify the information provided by the licensee prior to making an NOED determination. In such circumstances, the staff may grant an NOED based on balancing the overall public health and safety implications of not operating, with the potential radiological or other hazards associated with continued operation of the facility while in nonconformance with the particular requirement. The request must provide details of the basis and nature of the emergency; its potential consequences such as plant trip, controlled shutdown, delayed startup; the condition and operational status of the plant (equipment out of service or otherwise inoperable); status, and potential challenges to off-site and on-site power sources, and the impact of the emergency on plant safety. The licensee must identify actions that it took to avert and/or alleviate the emergency situation, including steps taken to avoid being in the noncompliance, as well as efforts to minimize grid instabilities (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling load, shedding interruptible industrial or non-emergency loads). In addition, the licensee's request must be sufficiently detailed for the staff to evaluate the likelihood that the event could affect the plant, the capability of the ultimate heat sink, on-site and off-site emergency preparedness status, access to and from the plant, acceptability of any increased radiological risk to the public and the overall public benefit.

3.0 General Expectations

Although the NOED process addresses unanticipated and time-critical conditions, the potential for NOED requests is usually predictable. Periodic communication between licensees and the staff, such as routine calls between licensees and their Project Managers (PMs), and daily plant status calls between the region and NRR, should identify potential NOED requests. Also,

the staff, through its periodic interface with the Department of Energy, Federal Energy Regulatory Commission, the North American Electric Reliability Council and communication with other government agencies, becomes aware of weather or other external conditions and their impact on grid stability. During periods of extreme weather-related power demand and/or grid stability, the Events Assessment, Generic Communications, and Non-Power Reactors Branch (REXB) should provide to the NRR Division Directors and Emergency Officers, on a periodic basis, a power demand situation report identifying geographic areas with potential problems and, when known, plants that might need NOEDs. As such, weather or other external condition-related NOED requests should not come as a surprise to the staff. These routine communications provide adequate advance notice of potential NOED requests to the staff such that the cognizant PM and the regional staff can mobilize appropriate technical and project resources for participating in the licensee - staff teleconferences to discuss NOED requests and process them promptly.

There may be other emergent and unanticipated circumstances, e.g., inoperable equipment, missed surveillances etc. with associated short allowable outage times that occur during off-business hours, when a licensee may need an NOED. In such situations, licensees should call the Emergency Operations Center (Telephone Number (301) 816-5100), to request a teleconference with cognizant staff. In these cases, the Headquarter's Operations Officer(HOO) will contact appropriate staff personnel so that the NOED request is considered in a timely manner. To enable the HOO to contact the appropriate staff personnel in these circumstances, the TA, DLPM, will assure that the Emergency Operations Center always has an up-to-date roster of PMs and their backups, Section Chiefs (SCs), and Project Directors (PDs) for all plants. In the event of the need for an NOED teleconference, the HOO will attempt to contact the assigned PM, backup PM, cognizant SC, or PD, in that order, to inform the individual of the teleconference and to determine which other staff members should be contacted for participation in the teleconference. If none of the project-specific DLPM staff can be contacted, the HOO will contact the DLPM Director, Deputy Director or another PD.

To enable the HOO to contact appropriate staff personnel, during regular business or non-business hours, in circumstances of severe weather or other external condition-related NOED requests, the following procedure will be implemented.

1. The Grid Oversight Working Group, which consists of members of the Electrical and Instrumentation and Controls Branch (EEIB), REXB, DLPM TA, and Engineering Research and Applications Branch, Office of Nuclear Regulatory Research, is responsible for alerting the staff to potential grid-related concerns such that one or more NOEDs might be requested. In such cases, the Working Group will notify the appropriate DLPM Project Director, the Regional Director, Division of Reactor Projects, the chiefs of REXB and EEIB and the Operations Center, indicating the potential for NOED requests and will identify a point of contact in EEIB (including home telephone number) who will be available for NOED discussions.
2. The TA, DLPM, will coordinate with TAs from other divisions in NRR and appropriate regional management to identify the individuals who will be available to participate, as appropriate, in licensee-staff teleconferences to discuss and review the NOED requests. As a minimum,

the following personnel (including their backups) should be included: cognizant PM, SC and PD, technical reviewers from EEIB, the Probabilistic Safety Assessment, Reactor Systems, Plant Systems, Materials and Chemical Engineering, Mechanical and Civil Engineering branches, and the cognizant regional director, DRP. The TA, DLPM, will provide to the HOO the list of identified staff personnel, and the roster of PMs whenever it is updated.

C. NOED PROCESS

An NOED may be issued by a region or NRR. The scope and responsibilities for regional and NRR NOEDs are described below. Typically, licensees request an NOED orally. All oral NOED requests should be followed by a written request by the licensee within 2 working days, except in the case of severe weather or other external condition-related NOEDs. Because the staff is required to inform the Commission of an NOED approval involving severe weather or other external conditions expeditiously, a written NOED request should be provided within a few hours of the oral request. If an NOED request involves a follow-up license amendment, the licensee's written NOED request should include a follow-up license amendment application. The staff may grant an NOED orally, but this should be followed by written authorization within 2 working days of the licensee's written request. Whenever an NOED is exercised, the staff's evaluation of the licensee's request, including the applicable items in Section C.4 of this guidance, should be documented in a letter to the licensee. The letter should follow the format and content of Attachment A to this guidance, indicate the current operating mode of the unit, and specify and discuss the maximum period of time for which the NOED is in effect (not exceed 14 days or until a follow-up license amendment is issued). Resolution of the condition that led to the request for enforcement discretion or issuance of the follow-up license would return the licensee to a condition of compliance with the license and thus should terminate the NOED. All licensee - staff teleconferences to discuss NOED requests should be made through the NRC headquarter's Emergency Operations Center recorded telephone line (Telephone No. (301) 816-5100). This provides a record of the discussion and a basis for future verification of its consistency with the licensee's follow-up written request.

1.0 Regional NOED

A region-issued NOED is appropriate when the noncompliance is nonrecurring, will not exceed 14 days in duration, and a license amendment is not practical because the plant will return to compliance with the existing license in a short period of time. Matters that a region-issued NOED may address include:

1. A noncompliance of short duration with the limits of a function specified in an LCO.
2. A noncompliance with an action statement time limit.
3. A noncompliance with a surveillance interval or a one-time deviation from a surveillance requirement.

The authority to issue an NOED is assigned to the Regional Administrator, who may delegate the authority to the Regional Division Director of Reactor Projects (DRP). Before issuing an NOED, the region should obtain the

concurrence of the cognizant NRR PD. The PD, in turn, should consult with the cognizant NRR technical branch chief(s) concerning the acceptability of issuing the NOED.

2.0. NRR NOED

Matters that an NRR-issued NOED may address include:

1. A noncompliance with a TS for a longer duration (i.e., exceeding 14 days).
2. A noncompliance for which a follow-up license amendment must be processed either as a one-time or a permanent change.
3. All severe weather or other external condition-related NOEDs regardless of the duration for which the NOED would be in effect.

The authority to issue an NOED is delegated to the cognizant NRR PD. Before issuing an NOED, the NRR PD should obtain concurrence from the responsible Regional Director, DRP. In addition, the PD should consult with and obtain concurrence from the appropriate NRR technical branch chiefs. Follow-up license amendments for NRR-issued NOEDs should be processed on an exigent basis in accordance with the process for exigent amendments. The follow-up license amendment should be issued by the NRC staff within 4 weeks of the issuance of the NOED unless otherwise justified by any special circumstances. Such special circumstances should be documented promptly in a memorandum from the responsible PD to the Associate Director for Project Licensing and Technical Analysis (ADPT). If necessary, an NOED-related issue that is part of a larger license amendment request should be handled as a separate amendment if that will expedite issuance. When amendments involving NOEDs are issued, the transmittal letter should identify the NOED which the amendment supersedes. Also, the PM should ensure that an electronic copy of the letter issuing the follow-up license amendment is sent to the E-mail address: NOED and OE Internet Webmaster, E-mail: OEWEB (file MUST be the FINAL agency document).

NRR is responsible for all NOEDs involving severe weather conditions or other external conditions. NRR has the lead for staff determination of the validity of the emergency and whether to grant an NOED. The PM, with assistance from appropriate technical staff, should make reasonable efforts to get a good assessment of the nature of the emergency. A teleconference should be held as soon as possible among senior licensee management, NRR and regional staffs. Participating staff personnel should include: NRR - PM, PD, cognizant technical branch chiefs, including the EEIB chief, if possible, to evaluate the emergency assessment, Regional DRP, and Resident Inspector. Following the teleconference the licensee must immediately submit (within a few hours) a follow-up written request documenting all the bases, justifications, commitments and other considerations and conditions discussed and agreed upon in the teleconference. The PM should inform the Commission of the issuance of the NOED through the cognizant Regional Coordinator, OEDO, as expeditiously as possible following granting of the NOED. See Attachment B for a sample memorandum from the OEDO to the Commission. The cognizant PM should prepare this memorandum in draft and give it to the cognizant Regional Coordinator, OEDO, for finalization and processing.

3.0 Multiple NOEDs

There may be occasions when several plants in different regions may request NOEDs simultaneously to address common conditions, e.g, a vendor advisory letter. In such cases, the regions and NRR should coordinate closely with each other to avoid potential duplication of effort and/or inconsistent approaches and to obtain any special assistance or expertise needed from NRR. In such cases, plant-specific NOEDs will be issued, either by the region or NRR, in accordance with Sections C.1 and C.2 of this guidance, to individual licensees. To assure consistency in staff determinations relating to the NOED requests, approvals, root cause violations and enforcement actions, the cognizant NRR technical branch chief(s) should be included in all discussions and decisions.

4.0. Request for an NOED

The staff should verify that the licensee's oral and written request for an NOED includes the following:

1. The TS or other license conditions that will be violated.
2. The circumstances surrounding the situation, including apparent root causes, the need for prompt action and identification of any relevant historical events.
3. The safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed course of action. This evaluation should include at least a qualitative risk assessment.
4. The basis for the licensee's conclusion that the noncompliance will not be of potential detriment to the public health and safety and that no significant hazard consideration is involved.
5. The basis for the licensee's conclusion that the noncompliance will not involve adverse consequences to the environment.
6. Any proposed compensatory measures.
7. The justification for the duration of the noncompliance.
8. A statement that the request has been approved by the facility organization that normally reviews safety issues (Plant On-site Review Committee, or its equivalent).
9. The request must specifically address which of the NOED criteria for appropriate plant conditions specified in Section B is satisfied and how it is satisfied.
10. If a follow-up license amendment is required, both the written NOED request and the license amendment request must be submitted within 2 working days. The licensee's amendment request must describe and justify the exigency.
11. For NOEDs involving severe weather or other external conditions, the licensee's request must be sufficiently detailed for the staff to evaluate the likelihood that the event could affect the plant,

the capability of the ultimate heat sink, on-site and off-site emergency preparedness status, access to and from the plant, acceptability of any increased radiological risk to the public and the overall public benefit. In addition to items 1-10 above, as appropriate, the licensee must provide:

- a. Details of the basis and nature of the emergency; potential consequences of forced compliance with the license conditions to the plant and to exacerbation of the emergency situation. The licensee must provide the name, organization and telephone number of the official who made the emergency assessment
- b. Status, and potential challenges to off-site and on-site power sources, and the impact of the emergency on plant safety.
- c. Demonstrated actions taken to avert and/or alleviate the emergency situation, including steps taken to avoid being in the noncompliance, as well as efforts to minimize grid instabilities (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling load, or shedding interruptible industrial or non-emergency loads).

The request from the licensee should normally be sent by facsimile or email to the NRR PD and the Regional Director, DRP. The signed original should be sent to the Document Control Desk. However, if circumstances do not permit time for a formal written request to be prepared and sent to the NRC, the licensee may make the request orally, describing to the best of its ability the information required by the staff.

If the request is made orally, the NRC should have sufficient information to reach the same conclusions as if it had received a written submittal. The follow-up written request should confirm the information that the staff relied upon in arriving at its conclusion to issue the NOED. If an NOED is authorized orally but the licensee subsequently determines that no violation of the license will occur and thus the NOED is not needed, the licensee and staff should still follow up with appropriate documentation. In such cases, the licensee must submit a letter within 2 working days, documenting its oral request, the NRC's oral approval, and the circumstances that led to the determination that the NOED is no longer needed.

D. STAFF EVALUATION AND DOCUMENTATION

Prior to issuance of an NOED, to the extent practicable, the regional Projects Branch Chief and/or the PM should verify the licensee's oral assertions, including root cause and compensatory measures, and that the NOED request is consistent with the staff's policy and guidance. If any of the verifications cannot be made prior to issuance of the NOED, this should be done subsequently, as soon as time permits. The results of the verification activities are to be documented in a subsequent inspection report. When an NOED is granted either by the region or NRR, the responsible resident inspector should open an Unresolved Item (URI) to facilitate prompt tracking, documentation and closure of inspection, verification and resolution activities, including enforcement action determinations, associated with the NOED.

The staff's letter documenting the NOED should be self-standing, address the appropriate items in Section C.4 of this guidance, and demonstrate that issuance of the NOED is consistent with the policy and guidance. The NOED letter should also clearly specify which of the licensee's arguments the staff accepted in reaching its decision and the NOED criterion that is satisfied. The sequence of events in the staff's letter should be clear and include: how and when the licensee first requested the discretion, what the length of the AOT/surveillance interval involved was, when the allowed time will end, when (if applicable) oral discretion was issued, the date of the licensee's follow-up written request (if the original was made orally), the specific period of discretion starting at the end of the AOT and, if the NOED was terminated before the staff's letter is issued, the letter should contain the time the NOED was actually terminated. The staff should document in the NOED letter its verification of the consistency between the licensee's oral and written requests. The letter should also identify by name and title, the key staff who participated in the NOED evaluation and approval and, if applicable, when the licensee's follow-up license amendment request will be or was submitted.

It is not acceptable to permit the licensee not to follow a TS or license condition while the staff considers a request for discretion. If the licensee is unable to provide the staff an adequate basis before the LCO time ends, the licensee must take the required actions to comply with the TS while endeavoring to provide the staff an adequate basis for granting the NOED. It is recognized that in cases involving short LCO times or complex issues, the staff may have to act before all the information is available. In such cases, if the information presented provides a clear basis that public health and safety is assured and that the criteria of the NOED policy are satisfied, then an NOED may be granted. If subsequent information fails to support the initial issuance of the NOED, it should be terminated, as discussed in Section E. In summary, the time it takes for the staff to evaluate the request for an NOED does not relieve the licensee from taking appropriate actions to comply with the TS.

E. ENFORCEMENT

1.0 Early Termination of NOED

If the NRC decides to terminate the NOED for any reason before the time specified in the NOED, the staff should verify that the licensee takes steps to achieve the appropriate plant status and implement the existing TS-required actions upon oral notification of the termination by the appropriate NRR PD or Regional Division Director.

Upon notification of termination of the NOED, the licensee must inform the NRC of the proposed course of action to restore the plant to a condition of compliance with the license. The termination of the NOED by the NRC should be documented in a letter to the licensee and should address the actions taken or planned by the licensee, including the time necessary for the licensee to achieve the required plant conditions in the most prudent manner considering safety.

2.0 Consideration of Enforcement

The decision to exercise enforcement discretion by issuing an NOED does not change the fact that a violation will occur, nor does it imply that enforcement discretion is being exercised for any violation that may have

led to the need for the NOED. In each case where the NRC staff has chosen to exercise enforcement discretion, appropriate enforcement action in accordance with the NRC's Enforcement Policy, will normally be taken for any violations that contributed to the root causes leading to the noncompliance. Such enforcement action is intended to emphasize that licensees should not rely on the NRC's NOED process as a substitute for compliance or for requesting a license amendment.

NRR-issued NOEDs should be closely coordinated with the appropriate region to ensure that the region considers the need for enforcement action for any root cause violations that led to the NOED issued by NRR. The staff should follow the guidance in the NRC Enforcement Manual located on OE's website (www.nrc.gov/OE), to determine and process the process the appropriate enforcement action. OE approval is required if more than a minor violation is involved and the staff determines not to issue an enforcement action, i.e., notice of violation or a non-cited violation. The enforcement action should reference the NOED number. All staff determinations regarding enforcement action associated with the issuance of an NOED should be documented by the region in the next appropriate inspection report under the URI established to track that NOED, regardless of whether or not the determination is to take enforcement action. If the root cause underlying an NOED request results in an escalated action, the time during which the NOED is effective will not be counted in considering the impact of the violation.

F. DISTRIBUTION

Copies of the letter to the licensee shall be distributed according to established regional and NRR procedures and shall include the following:

1. Regional Coordinator, OEDO
2. Regional Administrator
3. ADPT, NRR
4. Division Director, Division of Licensing Project Management (DLPM), NRR
5. Director, Office of Enforcement
6. Public
7. Technical Assistant, DLPM, NRR
8. Electronic copy (WordPerfect file) to E-mail address: NOED
9. Electronic copy (WordPerfect file) to OE Internet Webmaster, E-mail: OEWEB (file MUST be the FINAL agency document).
10. Appropriate Branch Chiefs (Region and NRR)
11. Appropriate NRR PD and Section Chief
12. Appropriate NRR PM
13. Appropriate Senior Resident Inspector

Further, the issuing office should ensure that the licensee's request is profiled into the Agencywide Document Access and Management System (ADAMS) as "publically available". Electronic copies of NOEDs should also be prepared in accordance with Attachment C. OE will post the staff's NOED approval or denial letter on the NRC public web page (www.nrc.gov/OE) for easy public access. The NOED database manager in DLPM, NRR, will maintain a file of all NOEDs. Also, for NRR-issued NOEDs, the PM should send an electronic copy of the letter issuing the follow-up license amendment to the E-mail address: NOED.

G. TRACKING OF NOTICES OF ENFORCEMENT DISCRETION

The NRR PM should open a Technical Assignment Control (TAC) number under Licensing Action code LD for all NOED actions involving significant (4 hours or more) NRR resources.

Each NOED request will be assigned a number to permit tracking. The issuing office will assign a number consisting of eight digits (six numbers and two dashes) in the format XX-X-XXX. The first two numbers indicate the year, the third number indicates the number of the region (use "6" for NRR), and the last two numbers are the sequential number of the NOED for the issuing office. For example, NOED 00-3-02 is the 2nd NOED issued by Region III in 2000. The NOED number should be included in parenthesis at the end of the subject line for the NOED, for example: (NOED 00-3-02) and in the ADAMS profile per the ADAMS template. The DLPM NOED database manager, will track and assign numbers for all NRR NOEDs. Regional NOED numbers will be assigned and tracked by designated regional personnel.

Each office (region or NRR) is responsible for tracking the NOEDs it issues and for entering the required data into its tracking system. Additionally, each region will be responsible for inspection, follow-up, and enforcement for all NOEDs issued, including those issued by NRR, for plants in that region.

On a semi-annual basis, the DLPM NOED database manager will request the regions to provide updated database information regarding follow-up actions to previously issued NOEDs. This should include references to documents and dates for verification of licensees' oral assertions in the NOED requests, the determination to take or to not take enforcement action for any violations that may have led to the need for the NOED, and any follow-up inspections of licensees' root cause determinations, and corrective actions.

H. NOED CHECKLIST

An NOED checklist is provided in Attachment D as an aid to the staff in assuring adherence to this guidance. Its use is discretionary and it is a companion, not a substitute, for the detailed guidance.

I. REFERENCE

NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions, Section VII C. 'Exercise of Discretion for an Operating Facility'"

END

Attachments:

A. Sample Letter for NOED Issuance

- B. Sample Letter for Notification to the Commission Regarding Issuance of NOEDs for Severe Weather or Other External conditions.
- C. File Format for Electronic Copy (WordPerfect file) of NOED Approval / Disapproval Letters.
- D. NOED Checklist

Attachment A
SAMPLE LETTER FOR NOED ISSUANCE

Addressee

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR [LICENSEE NAME] REGARDING [PLANT NAME(S)] [TAC NO. XXXXXX (if applicable), NOED NO.XXXX]

By letter dated [date of letter], you requested that the NRC exercise discretion not to enforce compliance with the actions required in [TS or license condition citation]. Your letter documented information previously discussed with the NRC in a telephone conference on [date] at [time]. The principal NRC staff members who participated in that telephone conference included [list name and titles of the principal staff participants]. You stated that on [date and time] the plant(s) would not be in compliance with [TS/license condition] which would require [statement of the requirement including the AOT and the date and time when the action statement was entered]. You requested that a Notice of Enforcement Discretion (NOED) be issued pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.C, of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, and be effective for the period [state licensee's requested period for the NOED]. This letter documents our telephone conversation on [date and time] when we orally issued this NOED. [If appropriate: We understand that the condition causing the need for this NOED was corrected by you causing you to exit from the [TS/license condition] and from this NOED on [date and time].

[Briefly restate the licensee's description of the events leading up to the request for the NOED and a summary of their safety rationale for issuing the NOED. Include any compensatory measures that the licensee has proposed.]

[Summarize the staff's evaluation of the licensee's request and supporting safety rationale including the items in Section C.4 of this guidance, state which of the licensee's justifications the staff accepted to the extent that staff verification of the licensee's oral assertions including root causes and compensatory measures, has been made prior to issuance of this letter, such verification should be documented here], and cite the explicit criterion in Section B of this guidance that the licensee satisfied.]

On the basis of the staff's evaluation of your request, we have concluded that an NOED is warranted because we are clearly satisfied that this action involves minimal or no safety impact, is consistent with the enforcement policy and staff guidance, and has no adverse impact on public health and safety. Therefore, it is our intention to exercise discretion not to enforce compliance with [TS/license condition] for the period from [date and time] until [if region-issued: date and time; if NRR-issued: until issuance of a license amendment, and state when the amendment request was or will be submitted; state if the approved NOED effective duration differs from the requested time and why]. [For NRR-issued NOEDs: The staff plans to complete its review and issue the license amendment within 4 weeks of the date of this letter.

As stated in the Enforcement Policy, action will be taken, to the extent that violations were involved, for the root cause that led to the noncompliance for which this NOED was necessary.

signature

Project Director, NRR
or
Regional Administrator or designee

Docket No(s): 50-xxx

Attachment B

SAMPLE MEMORANDUM FOR NOTIFICATION OF NOED FOR SEVERE WEATHER
OR OTHER EXTERNAL CONDITION

(Date)

OFFICE OF NUCLEAR REACTOR REGULATION
NOTIFICATION OF ISSUANCE OF AN NOED
FOR SEVERE WEATHER OR OTHER EXTERNAL CONDITION

Licensee: (Name of Licensee)
Facility:
Docket No:
NOED No.

To: Chairman and Commissioners

SUBJECT: ISSUANCE OF AN NOED FOR [Be specific: SEVERE WEATHER OR OTHER
EXTERNAL CONDITION]

This is to inform the Commission that a Notice of Enforcement Discretion (NOED) as a result of [severe weather or other external condition] was issued on [date] to [licensee name and facility]. This action is based on the licensee's request on [date] for an NOED. This is an information memorandum and requires no Commission action.

[Describe in summary form: the name, organization and telephone number of the official that made the emergency assessment, Details of the basis and nature of the emergency; consequences of forced compliance with the license conditions to the plant and to exacerbation of the emergency situation; status, and potential challenges to off-site and on-site power sources, and the impact of the emergency on plant safety; demonstrated actions taken to avert and/or alleviate the emergency situation, including steps taken to avoid being in the noncompliance, as well as efforts to minimize grid instabilities (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling load, shedding interruptible industrial or non emergency loads).

Contact:(name), NRR, 415-XXXX

Distribution:
Regional Administrators
Director, NRR
Cognizant PM/PD

Attachment C

FILE FORMAT FOR ELECTRONIC COPY (WORDPERFECT FILE)
OF NOED APPROVAL LETTER

1. Replace the WordPerfect Letterhead Paper Size with Standard Paper Size and include typed letter heading, and letter issue date, as follows:

UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555-0001
October 5, 2000

or for a Region

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
U.S. Nuclear Regulatory Commission
61 Forsyth Street, SW., Suite 23T85
Atlanta, GA 30303-3415
October 5, 2000

2. Remove the concurrence page and any attached internal distribution list.
3. Include the following above the letter author's name:
/original signed by (identify person who signed letter)/
4. Save the WordPerfect file with the following filename:
NEyyrser.wpd

where the number of the NOED is yy-r-ser, for example, NOED 00-1-01 for the first NOED issued by Region 1 in 2000. (WPD just tells users that it is a WordPerfect document.)
5. E-mail WordPerfect file to OEWEB (file MUST be FINAL agency document) and NOED.
6. ADAMS accession number

NOED CHECKLIST

NOTE: This is an aid to the staff in assuring adherence to this guidance. It's use is discretionary and it is a companion, not a substitute, for the detailed guidance.

Oral Request Date: _____
 NOED No. _____
 NRC NOED Letter Date _____

TAC No. _____

I. APPLICABILITY

Item	Check	Guidance
1. Non-compliance related to non-power or permanently shutdown power reactors	Yes	Stop. NOED is not applicable.
	No	
2. Non-compliance with TS or license condition	Yes	
	No	Stop. NOED is not applicable.
3. NOED is for short duration (≤ 14 days), one-time situation.	Yes	Regional issuance
	No	NRR issuance
4. Non-compliance related to severe weather or other external conditions that require balancing of overall public health and safety with radiological safety.	Yes	NRR issuance. NOED per Section B2.2. Review justification per Section C 4, item 11. Inform the Commission of the NOED issuance expeditiously.
	No	
5. NOED request is caused by licensee failing to apply for an amendment in a timely manner, i.e., poor planning.	Yes	Carefully scrutinize to preclude abuse of NOED process. Evaluate criteria for an exigent amendment per 10 CFR 50.91.
	No	
6. AOT has expired prior to staff approval of NOED	Yes	Stop. Licensee must comply with TS.
	No	
7. Do any of the following apply?: a. TS has been violated b. Poor planning c. Repeated NOEDs for same reasons	Yes	NOED approval requires closer scrutiny.
	No	

II. SAFETY CONSIDERATIONS

Item	Check		Guidance
1. NOED is for a plant operating at power.	Yes		Item 1a or 1b, must be satisfied.
	No		Proceed to Item 2.
a) NOED is for avoiding undesirable plant transient, i.e., shutdown or	Yes		Item 1a or 1b, must be satisfied
	No		
b) NOED would eliminate testing, inspection or system realignment that is inappropriate for particular plant conditions.	Yes		
	No		
2. The plant is in a shutdown condition?	Yes		Item 2a must be satisfied.
	No		Skip 2a and proceed to Item 3.
a. NOED would reduce shutdown risk by avoiding testing, inspection or system realignment that is inappropriate for particular plant conditions.	Yes		NOED is not appropriate.
	No		
3. Is the plant in a startup condition?	Yes		Item 3a, 3b or 3c must be satisfied
	No		
a) the equipment or system does not perform a safety function in the mode in which operation is to occur, or			Item 3a, 3b or 3c must be satisfied
b) equipment or system safety function is of only marginal safety benefit, <u>and</u> remaining in the current mode increases the likelihood of an unnecessary plant transient, or			
c) TS required test, inspection or system realignment is inappropriate for the particular plant conditions because it does not provide a safety benefit, or may be detrimental to safety			

III. PROCESS

Item	Chk	Guidance
1. Licensee's request		1. May be oral. Arrange licensee-staff telephone discussions thru the recorded line (301) 816-5100. 2. Written request within 2 working days for regular NOEDs, and within few hours for Severe weather or other external condition. Address items in Section C.4. 3. Submit follow-up license amendment along with the written NOED request.
2. TAC number assigned		Licensing Action Code: LD.
3. Verification		Region Project's Branch Chief/ NRR PM - Verify licensee's oral assertions, to the extent practical.
4. Concurrence		Region-issued: Requires NRR (PD) concurrence. NRR-issued: Requires regional Divisional Director of Reactor Projects and cognizant NRR technical branch chief(s) concurrence.
4. Issuing authority		Region: Regional Administrator or designee NRR: Project Director
5. NOED number		NRR: Obtain from NOED database manager, DLPM. Region: Per Region guidance
6. NOED granting		May be oral, to be followed by NOED letter within 2 working days of the licensees' written request.
7. Specify maximum period for which NOED is in effect		Region: Maximum 14 days NRR: Until the issuance of amendment (4 weeks maximum).
8. NOED letter		1. Follow sample (See Attachment A). 2. If subsequent to oral granting of an NOED, the licensee determines that no violation of the license will occur and thus the NOED is not needed, the licensee and staff should still follow-up with appropriate documentation. 3. Document consistency between the oral and written requests. 4. Cite and demonstrate how the specific NOED criteria are satisfied. 5. Identify, by name and title, principal staff participants in the NOED approval. 6. Evaluate and document applicable items in Section C.4 7. Specify time period for which NOED will be in effect. (See item 7 above).
9. Follow-up license amendment (NRR)		1. Issue exigent amendment within 4 weeks. If not, justify promptly by a memo to ADPT, NRR. 2. Send a copy of the amendment letter to email:NOED
10. Root cause violations		Determination made. NRR coordinates with the regions
11. Inspection Report		Region to open an URI and document root cause violation determination, NOED approval basis, results of verification activities to close URI.
12. Enforcement action		Coordinate with OE. Document determinations in the next appropriate inspection report.
13. Licensee LER		Required even if NOED is issued (if otherwise required).
14. Distribution		See Part 9900. Note: Electronic copy of Word Perfect file to Email addresses: NOED and OEWEB.

IV. LICENSEE REQUEST FOR ENFORCEMENT DISCRETION

Item	Chk	Remarks
1. The TS or other license conditions that will be violated.		
2. The circumstances surrounding the situation, including root causes, the need for prompt action and identification of any relevant historical events.		
3. The safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed course of action.		
4. The basis for the licensee's conclusion that the noncompliance will not be of potential detriment to the public health and safety and that a significant hazard consideration is involved.		
5. The basis for the licensee's conclusion that the noncompliance will not involve adverse consequences to the environment.		
6. Any proposed compensatory measure(s).		
7. The justification for the duration of the noncompliance.		
8. A statement that the request has been approved by the facility organization that normally reviews safety issues (Plant Onsite Review Committee, or its equivalent).		
9. The request must specifically address which of the criteria specified in Section B is satisfied and how.		
10. If a follow-up license amendment is required, the written NOED request must include marked-up TS pages showing the proposed TS changes.		
<p>11. For NOEDs involving severe weather or other external condition, the licensee must provide:</p> <ul style="list-style-type: none"> a. details of the basis and nature of the emergency; potential consequences of forced compliance with the license conditions to the plant and to exacerbation of the emergency situation. The licensee must provide the name, organization and telephone number of the official that made the emergency assessment b. status, and potential challenges to offsite and onsite power sources, and the impact of the emergency on plant safety. c. demonstrated actions taken to avert and/or alleviate the emergency situation, including steps taken to avoid being in the noncompliance, as well as efforts to minimize grid instabilities (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling load, shedding interruptible industrial or non-emergency loads). 		