

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

November 14, 2001

**NRC REGULATORY ISSUE SUMMARY 2001-20: REVISIONS TO
STAFF GUIDANCE FOR IMPLEMENTING NRC POLICY 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 - Notices of Enforcement Discretion," (NOEDs) has been revised to clarify the staff's existing policy on allowable risk associated in granting "regular" NOEDs. The revision is attached.

This RIS supersedes RIS 2001-10 dated April 2, 2001, on the same subject. This RIS does not transmit any new requirements or staff positions. 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, including technical specifications (TS), and other requirements. Nevertheless, in unusual circumstances, strict compliance with an NRC requirement could result in an unnecessary plant transient or unnecessary delays in plant startup or the performance of a test, inspection, or system realignment that is inappropriate for the prevailing plant conditions. In these circumstances, licensees may request that the NRC exercise discretion and refrain from enforcing applicable TS before a violation occurs. The NRC issues an NOED only when it is clear that the action is consistent with the agency's mission to protect public health and safety. NUREG-1600, the NRC's "General Statement of Policy and Procedures for NRC Enforcement Actions (Enforcement Policy)," establishes NRC policy for granting or denying requests for NOEDs.

DISCUSSION

The staff guidance on evaluating NOED requests has always been that the granting of any "regular" NOED (as distinguished from a "weather-related" NOED) must be at least safety and risk neutral. In the previous revision to the staff NOED guidance in Inspection Manual Part 9900, dated December 12, 2000, and as transmitted by RIS 2001-10, dated April 2, 2001, we

ML013190655

clarified the difference between "regular" and "weather-related" NOEDs. In doing so, the staff prefaced the Section B.2.1 discussion of "regular" NOEDs with the statement: "Granting of this type of an NOED shall not involve an increase in radiological risk." This was not intended to be a change from the staff's previous requirement that such NOEDs must be at least safety and risk neutral. However, because it was a new statement and was not explained adequately, it was subject to misinterpretation and caused some confusion.

The attached revision clarifies the staff's intent. This is the only significant change to the guidance. Other changes are administrative or editorial.

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.

If you have any questions concerning this matter, please contact one of the technical contacts listed below or the appropriate Office of Nuclear Reactor Regulation (NRR) project manager..

[RA Christopher I. Grimes for]
David B. Matthews, Director
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Technical contacts: L. Raghavan, NRR
301-415-1471
E-mail: lxr1@nrc.gov

H. Berkow, NRR
301-415-1485
E-mail: hnb@nrc.gov

Attachments:

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

clarified the difference between "regular" and "weather-related" NOEDs. In doing so, the staff prefaced the Section A.2.1 discussion of "regular" NOEDs with the statement: "Granting of this type of an NOED shall not involve an increase in radiological risk." This was not intended to be a change from the staff's previous requirement that such NOEDs must be at least safety and risk neutral. However, because it was a new statement and was not explained adequately, it was subject to misinterpretation and caused some confusion.

The attached revision clarifies the staff's intent. This is the only significant change to the guidance. Other changes are administrative or editorial.

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.

If you have any questions concerning this matter, please contact one of the technical contacts listed below or the appropriate Office of Nuclear Reactor Regulation (NRR) project manager..

[RA Christopher I.Grimes for]

David B. Matthews, Director
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Technical contacts: L. Raghavan, NRR
301-415-1471
E-mail: lxr1@nrc.gov

H. Berkow, NRR
301-415-1485
E-mail: hnb@nrc.gov

Attachments:

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

DISTRIBUTION:
PUBLIC RIS File

ADAMS ACCESSION NUMBER: ML013190655 (Package #)

OFFICE		Tech Editor	OGC	LPDII	REXB	AC:REXB	D:DRIP
NAME	LRaghavan*	PKleene*	TGoldberg*	HBerkow*	JTappert*	EVImbro*	DMatthews
DATE	10/29/2001	10/24/2001	11/06/2001	10/24/2001	11/07/2001	11/08/2001	11/13/2001

OFFICIAL RECORD COPY

LIST OF RECENTLY ISSUED
NRC REGULATORY ISSUE SUMMARIES

Regulatory Issue Summary No.	Subject	Date of Issuance	Issued to
2001-19	Deficiencies in the Documentation of Design Basis Radiological Analyses Submitted in Conjunction with License Amendment Requests	10/18/2001	All holder of operating licenses for nuclear power reactors
2001-18	Requirements for Oath or Affirmation	08/22/2001	All holders of construction permits or operating licenses for nuclear power reactors and non-power reactors under Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50), including those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, holders of licenses issued under 10 CFR Part 72, and holders of certificates issued under 10 CFR Part 76
2001-17	Preparation and Scheduling of Operator Licensing Examinations	08/22/2001	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
2001-16	Update of Evacuation Time Estimates	08/01/2001	All holders of operating licenses for nuclear power plants
2001-15	Performance of DC-Powered Motor-Operated Valve Actuators	08/01/2001	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