

DRAFT SUPPORTING STATEMENT FOR  
EXERCISE OF DISCRETION FOR AN OPERATING FACILITY  
NRC ENFORCEMENT POLICY (NUREG-1600)  
NOTICE OF ENFORCEMENT DISCRETION (NOEDs)  
(OMB Clearance No. 3150-0136)

Revision Request

DESCRIPTION OF THE INFORMATION COLLECTION

The Commission's Enforcement Policy (NUREG-1600) includes the circumstances in which the Commission may exercise notice of enforcement discretion. On occasion, circumstances arise when a power plant licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or any other license condition would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant (GDP), circumstances may arise where compliance with a Technical Safety Requirement (TSR) or other certificate condition would unnecessarily call for a total plant shutdown or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

In these circumstances, a licensee or certificate holder may request that the Commission exercise enforcement discretion, and the NRC staff may choose to not enforce the applicable TS, TSR, or other license or certificate condition. This enforcement discretion is designated as a Notice of Enforcement Discretion (NOED).

A licensee or certificate holder seeking the issuance of a NOED must document the safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed request, a description of proposed compensatory measures, a justification for the duration of the request, the basis for the licensee's or certificate holder's conclusion that the request does not have a potential adverse impact on the public health and safety, and does not involve adverse consequences to the environment, and any other information the NRC staff deems necessary before making a decision to exercise discretion.

A. JUSTIFICATION

1. Need for and Practical Utility of the Collection of Information

The Commission believes that the NRC staff needs the authority to quickly exercise discretion in this area in order to avoid unnecessary plant transients, to minimize both operational and shutdown risk, or to avoid unnecessary delays in plant startup where the course of action involves minimal or no safety impact on the public health and safety.

Procedural Framework Section: The licensee or other person is provided an opportunity to contest in writing the proposed imposition of a civil penalty.

A licensee must answer a Demand for Information (Demand)

An unlicensed person may answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

Predecisional Enforcement Conferences: If a conference is not held, the licensee may be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and description of planned or implemented corrective actions.

The complainant who alleges discrimination is given the opportunity to comment on the licensee's presentation in a predecisional conference.

In cases where the complainant is unable to attend in person, the complainant is given an opportunity to participate by telephone and submit a written response to the licensee's presentation.

If the licensee chooses to forego an enforcement conference and, instead, responds to NRC's finding in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response.

Notice of Violation: Notice of Violations (NOVs) requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis of disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date when full compliance will be achieved.

The NRC may waive all or portions of a written response to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report.

NRC may require responses to NOVs to be under oath.

Base Civil Penalty: Licensee must demonstrate financial hardship if it cannot pay a high civil penalty. The licensee is required to address why it has sufficient response to safety conduct licensed activities and pay license and inspection fees.

Credit for Prompt and Comprehensive Corrective Action: The license cannot get credit for prompt action in a discrimination issue unless the comprehensive corrective action (a) addresses the broader environment for raising safety concerns in the workplace, and (2) provides a remedy for the particular discrimination at issue.

In response to 50.59 violations, the corrective action should normally be a prompt evaluation if the licensee intends to maintain the facility or procedure in the as found condition; or promptly initiates corrective action consistent with Criterion XVI or 10 CFR 50, Appendix B.

Related Administrative Action: The licensee is afforded an opportunity to show why the Order should not be issued in the proposed response to a Demand for Information (2.204) .

A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken or planned, the results achieved, and the date when corrective action will be completed.

Notices of Nonconformance request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

Demands for Information are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.

Power Reactor Licensees: The licensee will put Non-Cited Violations (NCV) into the licensee's corrective action program rather than be issued a NOV (Recordkeeping required).

Notice of Enforcement Discretion for Power Reactors and Gaseous Diffusion Plants: A licensee or certificate holder seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether to issue a NOED.

Enforcement Actions Involving Individuals: To gather information to determine whether an order or other enforcement action should be issued, the NRC can issue Demands for Information.

Orders to NRC-licensed reactor operators may require notification to the NRC before an operator resumes working at licensed activities.

Orders to NRC-licensed reactor operators may require the person to tell a prospective employee or customer engaged in licensed activities that the person has been subject to an NRC order (3<sup>rd</sup> party collection).

An unlicensed person whose firm has been subject to an order must give prior notice to the NRC before utilizing the person in licensed activities or the licensee must provide notice of the issuance of such an order to other persons involved in licensed activities making reference inquiries.

In addition, orders to employees might require retaining, additional oversight, or independent verification of activities performed by the person, if the person is to be involved in licensed activities.

Inaccurate and Incomplete Information: An opportunity to correct oral communication by the licensee to obtain a complete record in a timely manner. (Correction of a transcript made by NRC)

Enforcement Action Against Non-Licensees: Through procurement contracts with licensees, suppliers may be required to have quality assurance programs that meet applicable requirements e.g., 10 CFR Part 50, Appendix B, and 10 CFR part 71, Subpart H.

Contractors supplying certain products or services to licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

Interim Enforcement Policies (Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)): Enforcement action will not be taken for violations of 10 CFR 31.5 if they are identified by the general licensee, and reported to the NRC, provided that the general licensee takes appropriate corrective action to address the specific violations and prevent recurrence of similar problems. (3150-0016)

Interim Enforcement Policy Regarding Enforcement Discretion for Nuclear Power Plants During the Year 2000 Transition: In those cases in which year 2000 (Y2K) related complications would otherwise require a plant shutdown that could adversely affect the stability and reliability of the electrical power grid. A licensee may contact the NRC headquarters Operations Center and seek NRC enforcement discretion with regard to the potential noncompliance with license conditions, including Tss.

A licensee seeking NRC enforcement discretion must provide a written justification, or in circumstances in which good cause is shown an oral justification followed by a written justification must document the need and safety basis for the request and provide whatever other information the NRC staff needs to make a decision regarding whether the exercise of discretion is appropriate.

## 2. Agency Use of Information

The agency will use the information provided by a licensee or certificate holder to determine if the exercise of enforcement discretion is clearly consistent with protecting the public health and safety, and there is no potential for adverse consequences to the environment.

For an operating nuclear power plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular

plant condition, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to start up is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that: (1) the equipment or system does not perform a safety function in the mode in which operation is to occur; or (2) notwithstanding that the safety function performed by the equipment or system may have any marginal safety benefit, remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or license condition requires a test, inspection or system realignment that is inappropriate for the particular plant condition, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

For a gaseous diffusion plant, this exercise of enforcement discretion is intended to minimize the potential safety, safeguards, or security consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the certificate conditions: (1) the equipment or system does not perform a safety function in the mode in which operation is to occur; or (2) the safety function performed by the equipment or system is of only marginal safety benefit, and remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TSR or certificate condition requires a test, inspection or system realignment that is inappropriate for the particular plant condition, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. Moreover, the NRC encourages its use. However, because of the types of information and the infrequency of submission, the reports do not readily lend themselves to the use of technological collection techniques for submission.

4. Effort to Identify Duplication and Use Similar Information

This information is only necessary when a licensee or certificate holder seeks the issuance of an NOED. There is no other time the relevant information is required to be submitted, and there is no source for the information other than licensees or certificate holders.

5. Effort to Reduce Small Business Burden

This voluntary information collection is only applicable to licensees of nuclear power plants and certificate holders of gaseous diffusion plants and does not affect small businesses.

6. Consequences to the Federal Program or Policy Activities if the Collection is Not Conducted or is Conducted Less Frequently

This action is strictly voluntary and information is required only upon the licensee's or certificate holder's request for enforcement discretion.

7. Circumstances Which Justify Variation From OMB Guidelines

This action does not vary from OMB guidelines.

8. Consultation Outside the NRC

The opportunity for public comment has been published in the Federal Register.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

NRC provides no pledge of confidentiality for the collection. To the extent information is business confidential, procedures are in place to protect the information from improper disclosure.

11. Justification for Sensitive Questions

No sensitive information is requested.

12. Estimate of Industry Burden and Burden Hour Cost

Since requesting a NOED is voluntary, only an estimate can be made of the number of licensees and certificate holders choosing to implement its requirements. Staff estimates, based on past experience, that 15 power plant licensees and 2 GDP certificate holders will request one NOED each year. The burden estimate per request is 150 hours; the total annual burden is 2,550 hours (17 licensees/certificate holders x 150 hours). The total cost at \$150 an hour is \$382,500.

13. Estimate of Other Additional Costs

No additional costs are anticipated.

14. Estimated Annual Cost to the Federal Government

The estimated annual burden to the government for reviewing licensee and certificate holder requests for enforcement discretion is 40 hours per request, including meetings and secretarial support. Approximately 15 licensees and 2 certificate holders are expected to request one enforcement discretion each year. Therefore, the total burden is estimated at 680 hours (17 licensees/certificate holders x 40 hours). The total cost at \$150 an hour is \$102,000.

This cost is fully recovered through license and certificate fees assessed to NRC licensees and certificate holders pursuant to 10 CFR Parts 170 and/or 171.

15. Reasons for Change in Burden or Cost

Although the number of responses has decreased from 38 to 17 based on actual NOED's received annually during the past 3 years, the overall burden has increased from 2,280 to 2,550 hours because the estimated time per request has increased from 60 to 150 hours to provide a more detailed justification which is now necessary to obtain NOED approvals. The revised estimate is based on the need for licensees to provide further technical justification for the NOEDs to include documenting the bases and nature of the emergency, potential consequences to the plant and emergency situation, potential challenges to off-site and on-site power sources, demonstrated actions taken to avert and/or alleviate the emergency situation, including steps taken to avoid being in noncompliance, as well as efforts to minimize grid instabilities, etc.

16. Publication for Statistical Use

The information will not be published for statistical use.

17. Reason for Not Displaying the Expiration Date

The requirement is contained in NUREG-1600. Revising the NUREG merely to update the expiration date unnecessarily expends scarce agency resources.

18. Exceptions to the Certification Statement

None.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical methods are not used in this information collection.

U. S. NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Exercise of Discretion for an Operating Facility, NRC Enforcement Policy (NUREG-1600) - (Notice of Enforcement Discretion (NOEDs))
2. Current OMB approval number: 3150-0136
3. How often the collection is required: On occasion



4. Who is required or asked to report: Nuclear power reactor licensees and gaseous diffusion plant certificate holders
5. The number of annual respondents: 17
6. The number of hours needed annually to complete the requirement or request: 2,550
7. Abstract: The NRC's Enforcement Policy addresses circumstances in which the NRC may exercise enforcement discretion. This enforcement discretion is designated as a Notice of Enforcement Discretion (NOED) and relates to circumstances which may arise where a nuclear power plant licensee's compliance with Technical Specification Limiting Condition for Operation or with other license conditions which involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant, circumstances may arise where compliance with a Technical Safety Requirement or other condition would unnecessarily call for a total plant shutdown, or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

A licensee or certificate holder seeking the issuance of an NOED must provide a written justification, in accordance with guidance provided in NRC Inspection Manual, Part 9900, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary to decide whether or not to exercise discretion.

Submit, by (insert date 60 days after publication in the Federal Register), comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site:

<http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 E6, Washington, DC 20555-0001, by telephone at 301-415-7233, or by Internet electronic mail at INFOCOLLECTS@NRC.GOV.

Dated at Rockville, Maryland, this 12th day of February 2002.

For the Nuclear Regulatory Commission

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Brenda Jo. Shelton, NRC Clearance Officer  
Office of the Chief Information Officer

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Dated at Rockville, Maryland, this 12th day of February 2002.

For the Nuclear Regulatory Commission

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Brenda Jo. Shelton, NRC Clearance Officer  
Office of the Chief Information Officer

\* See previous concurrence.

ACCESSION NUMBER: ML013190425 (DRAFT)

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