

FINAL SUPPORTING STATEMENT FOR
NOTICE OF ENFORCEMENT DISCRETION (NOEDs) FOR
OPERATING POWER REACTORS AND
GASEOUS DIFFUSION PLANTS (GDP)
(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 shutdown or other 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. The title of this clearance has been changed to better define what is actually covered.

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.

Exercise of enforcement discretion may be appropriate only where the exercise of discretion is temporary and nonrecurring. The NRC might exercise discretion where the expected noncompliance is of such short duration that a license or certificate amendment could not be issued before the need no longer exists, making it impractical to amend the license or certificate. It may also be appropriate to exercise discretion for the brief period of time it requires the NRC staff to process an exigent Technical Specification amendment under the provisions of 10 CFR 50.91(a)(6). It may be appropriate to exercise enforcement discretion for the period of time it takes to process an amendment to change a TSR or certificate condition under the provisions of 10 CFR 76.

Finally, the decision to exercise enforcement discretion is one that the NRC staff is under no obligation to make. When it is exercised, it is to be exercised only if the staff is clearly satisfied that the action is warranted from a health and safety perspective.

The impact on each licensee or certificate holder of providing the NRC staff with the information the staff requires to determine if exercising enforcement discretion is in the best interest of the public health and safety is inconsequential in comparison with the alternative: follow license or certificate conditions and either cease power operations and shut down the plant, or perform testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or delay plant startup. Requesting that the NRC staff exercise enforcement discretion is strictly a voluntary option for all licensees and certificate holders.

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 was published in the Federal Register on February 19, 2002 (67 FR 7404). No comments were received.

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.