[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NUREG - 1600]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG-1600) (Enforcement Policy or Policy) to include an administrative change that provides that the appropriate Regional Administrator will issue all Notices of Enforcement Discretion (NOEDs) for power reactors.

DATES: This revision is effective (insert date of publication in the *Federal Register)*. Comments on this revision to the Enforcement Policy may be submitted on or before (insert date 30 days after publication in the *Federal Register*).

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room

O1F21, 11555 Rockville Pike, Rockville, MD. You may also email comments to nrcrep@nrc.gov.

The NRC maintains the current Enforcement Policy on its Web site at http://www.nrc.gov, select **What We Do**, **Enforcement**, then **Enforcement Policy**.

FOR FURTHER INFORMATION CONTACT: Herbert N. Berkow, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, (301) 415-1395, e-mail (HNB@nrc.gov) or Renée Pedersen, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, (301) 415-2742, e-mail (RMP@nrc.gov).

SUPPLEMENTARY INFORMATION: Section VII.C of the Enforcement Policy describes the circumstances when the staff may exercise enforcement discretion in the form of a NOED for power reactors.

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation (LCO) or other license condition would involve: (1) an unnecessary plant transient; (2) performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions; or, (3) unnecessary delays in plant startup without a corresponding health and safety benefit. The staff may also grant enforcement discretion in cases involving severe weather or other natural phenomena. This decision is based upon balancing the public health and safety or common defense and security of not operating against the potential radiological or other hazards associated with continued operation, resulting in a determination that safety will not be impacted unacceptably by

exercising this discretion. The Commission is to be informed expeditiously following the granting of a NOED in such situations.

In these circumstances, the NRC staff may choose to not enforce the applicable TS or other license condition. This enforcement discretion, designated as a NOED, is only exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. NRC guidance for implementing the NOED policy for power reactors is provided in the NRC Inspection Manual Part 9900 guidance.

The Enforcement Policy and implementing guidance have historically recognized the distinction between: (1) those instances where a noncompliance is temporary and nonrecurring when an amendment is not practical, and (2) those instances where a noncompliance will occur during the brief period of time required for the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). In the first situation, the Regional Administrator has issued the NOED and subsequently documented the decision for granting the NOED. In the second situation, the Director, Office of Nuclear Reactor Regulation (NRR) has issued the NOED and subsequently documented the decision for granting the NOED. In other words, the current distinction between region-issued and NRR-issued NOEDs for power reactors is based on the duration of the NOED and whether or not a follow-up license amendment is appropriate.

This revision of the Enforcement Policy eliminates the distinction between region-issued and NRR-issued NOEDs for power reactors. Although historically most NOEDs have been issued and documented by the cognizant regions without follow-up license amendments, all

NOED requests have been evaluated and decisions made jointly by the regional and NRR staffs. Thus, the distinction is unnecessary.

The Enforcement Policy revision specifies that the associated regional and headquarters staff will together determine the appropriateness of granting a requested NOED. If the NOED is determined to be appropriate, regional staff will complete the documentation process associated with granting the NOED.

The revision provides that, for all power reactor NOED determinations, the Regional Administrator, or his or her designee, may issue a NOED after consultation with headquarters and therefore eliminates the need to categorize NOEDs as regional- or headquarters-lead. This clarification will provide a more predictable, clear, and consistent process for licensees when requesting NRC to consider granting a NOED.

This policy revision, as well as other NOED process improvements, was discussed with representatives of the Nuclear Energy Institute (NEI) and other stakeholders at a public meeting with the NRC staff on July 14, 2004. The NRC plans on completely revising and reissuing its Part 9900 guidance later in the year. In addition to the Enforcement Policy revision, other process improvements include emphasizing that the license amendment process should be used in preference to NOEDs whenever possible and developing improved guidance to address the NOED request requirement to demonstrate no net increase in radiological risk. In addition, other concurrent improvements to the NOED process will result in most NOEDs having follow-up license amendments regardless of the NOED duration.

The revision to the Enforcement Policy is strictly administrative in nature and will support simplification of the NOED process by providing a clear understanding of the roles and responsibilities of NRC regional and headquarters staff associated with issuance of NOEDs.

It is anticipated that the Enforcement Policy revision will have minimal, if any, impact on external stakeholders.

Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person in not required to respond to, collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC had determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, the proposed revision to the NRC Enforcement Policy reads as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

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VII. EXERCISE OF DISCRETION

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C. Notice of Enforcement Discretion for Power Reactors and Gaseous Diffusion Plants

On occasion, circumstances may arise where a power reactor's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with 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 technical specification 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, the NRC staff may choose not to enforce the applicable TS, TSR, or other license or certificate condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. The NRC staff may also grant enforcement discretion in cases involving severe weather or other natural phenomena, based upon balancing the public health and safety or common defense and security of not operating against the potential radiological or other hazards associated with continued operation, and a determination that safety will not be impacted unacceptably by exercising this discretion. The Commission is to be informed expeditiously following the granting of a NOED in these situations. 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, that documents the safety basis for the request and provides whatever other information necessary for the NRC staff to make a decision on whether to issue a NOED.

For power reactors, the appropriate Regional Administrator, or his or her designee, may issue a NOED after consultation with the Director, Office of Nuclear Reactor Regulation, or his or her designee, to determine the appropriateness of granting a NOED where (1) the noncompliance is temporary and nonrecurring when an amendment is not practical or (2) if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91 (a)(5() or (6). For gaseous diffusion plants, the appropriate Regional Administrator, or his or her designee, may issue and document a NOED where the noncompliance is temporary and nonrecurring and when an amendment is not practical. The Director, Office of Nuclear Materials Safety and Safeguards, or his or her designee, may issue a NOED if the expected

noncompliance will occur during the brief period of time it requires the NRC staff to process a certificate amendment under 10 CFR 76.45. The person exercising enforcement discretion will document the decision.

For an operating reactor, 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 conditions, 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 startup 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, notwithstanding the conditions of the license: (1) the equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires 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.

For GDPs, the exercise of enforcement discretion would be used where compliance with a certificate condition would involve an unnecessary 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. Such regulatory flexibility is needed because a total plant shutdown is not necessarily the best response to a plant condition. GDPs are designed to operate continuously and have never been shut down. Although portions can be shut down for maintenance, the NRC staff has been informed by the certificate holder that restart from a total plant shutdown may not be practical and the staff agrees that the design of a GDP does not make restart practical. Hence, the decision to place either GDP in plant-wide shutdown condition would be made only after determining that there is inadequate safety, safeguards, or security and considering the total impact of the shutdown on safety, the environment, safeguards, and security. A NOED would not be used for noncompliances with other than certificate requirements, or for situations where the certificate holder cannot demonstrate adequate safety, safeguards, or security.

The decision to exercise enforcement discretion 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 violation at issue. In each case where the NRC staff has chosen to issue a NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees and certificate holders should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license or certificate amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego enforcement is discretionary. When enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that the action is warranted from a health and safety perspective.

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Dated at Rockville, MD, this 8th day of November, 2004.

For the Nuclear Regulatory Commission.

/RA/

Annette L. Vietti-Cook,

Secretary of the Commission.