

FINAL SUPPORTING STATEMENT FOR  
NOTICE OF ENFORCEMENT DISCRETION (NOEDs) FOR  
OPERATING POWER REACTORS AND  
GASEOUS DIFFUSION PLANTS (GDP)

(OMB Clearance No. 3150-0136)  
Renewal with Burden Revision

DESCRIPTION OF THE INFORMATION COLLECTION

The Commission's Enforcement Policy (NUREG-1600) includes the circumstances in which the Commission may grant a 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.

In this 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 an 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.

10 CFR Part 50.48, "Fire Protection, Voluntary Adoption of NFPA-805 Fire Protection Requirements," was modified which added the requirement to NUREG-1600 for the licensee to submit a letter of intent to implement the risk-informed process in NFPA-805 and also to submit one of the retractions if it changed its mind about adopting NFPA-805. The information collections were approved at the Proposed Rule stage by OMB on February 13, 2003, and the final rule was published in the Federal Register on June 16, 2004 (69 FR 33536).

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 such that a license or certificate amendment is not appropriate. It may also be appropriate to exercise discretion for the brief period of time it requires for the NRC staff to process an exigent Technical Specification amendment under the provisions of 10 CFR 50.91(a)(6), or 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 cease power operations and either 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 expected to be extremely rare, but 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. The NRC encourages respondents to use information technology when it would be beneficial to them. NRC issued a regulation on October 10, 2003 (68 FR 58791), consistent with the Government Paperwork Elimination Act, which allows its licensees, vendors, applicants, and members of the public the option to make submissions electronically via CD-ROM, e-mail, special Web-based interface, or other means. 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. NRC has in place an on-going program to examine all information collections with the goal of eliminating all duplication and/or unnecessary information collections.

5. Effort to Reduce Small Business Burden

Not applicable.

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 NRC has discussed with stakeholders and NEI the new process which was issued in NRC Regulatory Issue Summary (RIS) 2005-01, "Changes to Notice of Enforcement Discretion (NOED) Process and Staff Guidance," dated February 7, 2005, ADAMS accession number ML050280380.

After allowing adequate time to review the RIS, the NRC consulted with three different stakeholders, which represent a total of 26 plants, regarding the estimated burden relating to the information collections contained in this document. The NRC and the stakeholders are in agreement and these estimates are reflected in this package.

Opportunity to comment on the information collections was published in the Federal Register on April 8, 2005 (70 FR 18056). No comments were received.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

No confidential information is required, except for proprietary information which would be handled in accordance with 10 CFR 2.390 of NRC's regulations.

11. Justification for Sensitive Questions

Not applicable.

12. Estimate of Industry Burden and Burden Hour Cost

Since requesting an NOED is voluntary, only an estimate can be made of the number of licensees and certificate holders choosing to implement its requirements. Staff estimates that 10 power plant licensees and 1 GDP certificate holder will request 1 NOED annually. The burden estimate per request is 150 hours; the annual burden is 1,650 hours (11 licensees/certificate holders x 150 hours).

Additionally, 10 CFR Part 50.48, "Fire Protection, Voluntary Adoption of NFPA-805 Fire Protection Requirements," was modified which added the requirement to NUREG-1600 for the licensee to submit a letter of intent to implement the risk-informed process in NFPA-805 and also to submit one of retraction if it changed its mind about adopting NFPA-805. Staff estimates that four letters of intent will be submitted annually. The burden estimate per request is 40 hours; the annual burden is 160 hours (four letters of intent x 40 hours per request = 160).

As a result of requesting an NOED, there is an implied recordkeeping burden. This recordkeeping burden is estimated at 181 hours (16.45 hours per recordkeeper) for maintaining a copy for the licensees records. It is also anticipated that most licensees will maintain a copy for their records.

The total annual burden is 1,991 hours. The total cost at \$157 an hour is \$312,587 (1,991 hours x \$157/hr).

Total Burden/Cost: 1,991 hrs(1,810 hrs reporting + 181 hrs  
recordkeeping)/\$312,587  
Total Respondents: 11  
Total Responses: 26 (15 responses and 11 recordkeepers)

13. Estimate of Other Additional Costs

The recordkeeping burden is roughly proportional to the quantity of records required to be maintained. Based on the number of pages maintained for a typical clearance, the record's storage cost has been determined to be equal to .0004 times the recordkeeping burden cost. Therefore, the storage cost for this clearance is estimated to be \$11.37 (181 hours X \$157/hour X .0004).

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 10 licensees and one certificate holder are expected to request one enforcement discretion each year. Therefore, the total burden is estimated at 440 hours (11 licensees/ certificate holders x 40 hours). The total cost at \$157 an hour is \$69,080.

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

The overall estimated burden decreased from 2,550 hours to 1,991 hours, 559-hour decrease. The estimated burden initially decreased from 2,550 to 1,650 hours (a 900-hour decrease) because fewer NOED requests (11 versus 17 annually) are anticipated during the next three years. An additional burden

of 160 reporting hours and 181 recordkeeping hours will be realized because of the submission of letters of intent under 10 CFR Part 50.48, "Fire Protection, Voluntary Adoption of NFPA-805 Fire Protection Requirements" and maintaining copies for licensee records. The information collections were approved at the Proposed Rule stage by OMB on February 13, 2003, and the final rule was published in the Federal Register on June 16, 2004 (69 FR 33536). Therefore, the estimated burden for this collection has decreased by 559 hours (160 hours + 181 recordkeeping hours - 900 hours)."

16. Publication for Statistical Use

None.

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

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.