

CHAPTER 2

DISPOSITIONING NONCOMPLIANCES

Chapter 2 provides information regarding:

- ▶ the initial stages of the enforcement process

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2.1 Protecting Public Health and Safety and Providing for the Common Defense and Security

When an apparent safety or security issue is identified:

- The region should initiate immediate action to correct the condition if the public is likely to be endangered by continued operations or there is a concern involving the lack of integrity of those involved in licensed activities. Immediate corrective action can include issuing:

☛ The first response when an apparent safety or common defense and security issue is identified should be to ensure corrective actions are initiated. Whether the issue may warrant enforcement action is a secondary consideration.

1. A Confirmatory Action Letter (CAL); or
 2. An immediately effective order.
- b. Based on the circumstances of the case:
1. An expedited inspection report limited in scope to the issue may be prepared; or
 2. The Office of Investigation (OI) may provide preliminary information.
 3. Enforcement action may be taken before an inspection report is issued or a predecisional conference is held.

2.2 Identifying Noncompliances

- a. Noncompliances include:
1. **Violations:** defined as a licensee's failure to comply with a legally binding requirement, such as a regulation, rule, order, license condition, or technical specification.
 2. **Deviations:** defined as a licensee's failure to:
 - (a) satisfy a written commitment; or
 - (b) conform to the provisions of code, standard, guide, or accepted industry practice when the commitment, code, standard, guide, or practice involved has not been made a legally binding requirement by the Commission, but is expected to be implemented.
 3. **Nonconformances:** defined as a vendor's or certificate holder's failure to meet contract requirements related to NRC activities (e.g., 10 CFR Part 50, Appendix B) where the NRC has not placed requirements directly on the vendor or certificate holder.
- ☞ Failure to comply with a Regulatory Guide or a Generic Letter is not a violation (unless information in these documents has been incorporated into a license condition) because Regulatory Guides and Generic Letters are not requirements. In addition, a licensee's failure to comply with its procedures is not a violation unless the licensee's procedures have been made a legally binding requirement, e.g., by license condition.
- b. Potential noncompliances may be identified through:
- NRC inspections
 - NRC investigations
 - Allegations supported by an NRC inspection or investigation

- Licensee internal audits
- Licensee employee reports
- Licensee self-disclosing events

2.3 Gathering Facts

- a. It is necessary to gather specific information about an apparent noncompliance so that the agency can make an informed decision on how to disposition it appropriately. When an apparent noncompliance is identified, the agency must:
 1. Determine whether a noncompliance has occurred (an event with safety consequences does not necessarily constitute a noncompliance);
 2. Assess the safety significance;
 3. Categorize the severity level (if appropriate); and
 4. Determine the appropriate enforcement action.
- b. The information that is gathered is also used to document the enforcement process; therefore, it must be complete and accurate.
- c. The following questions serve as a guideline for gathering the information necessary to inform the enforcement process. The list should not be considered prescriptive, or all encompassing.
 1. What requirement or commitment was violated?
 2. How was the requirement or commitment violated?
 3. Who caused the requirement or commitment to be violated?
 4. When was the requirement or commitment violated?
 5. How long did the noncompliance exist?
 6. How, when, and by whom (licensee or NRC) was the violation discovered?
 7. What is the apparent significance of the issue, e.g., actual or potential consequences, potential for impacting regulatory process, was willfulness involved?
 8. What information is necessary to complete the SDP (if applicable)?
 9. What was the apparent cause?
 10. What corrective actions have been taken or are planned to be taken (if known)?

11. Did the licensee place the issue in its corrective action program (if applicable)?
12. Was the licensee required to report the violation and, if so, what was the applicable reporting requirement?
13. If a report was required, when was the report made to the NRC?

2.4 Assessing Significance

After the staff has determined that the nonconformance is a violation, the staff must assess the significance of the violation before determining how the violation should be dispositioned. The staff considers four specific factors when assessing significance:

- a. **Actual Safety or Security Consequences:** Actual safety or security consequences include an actual:
 - Onsite or offsite release of radiation
 - Onsite or offsite radiation exposure
 - Accidental criticality
 - Core damage
 - Loss of a significant safety barrier
 - Loss of control of radioactive material
 - Radiological emergency
- b. **Potential Safety or Security Consequences:**
 1. Potential safety or security consequences include potential outcomes based on realistic and credible scenarios, i.e., the staff considers the likelihood that safety or security could have been negatively impacted under these scenarios.
 2. The NRC will use risk information wherever possible in assessing significance and assigning severity levels.
 - (a) A higher severity may be warranted for violations that have greater risk significance and a lower severity level may be appropriate for issues that have low risk significance.
 - (b) Duration is an appropriate consideration in assessing the significance of violations.
- c. **Impacting the Regulatory Process:** The NRC considers the safety significance of noncompliances that may impact the NRC's ability to carry out its statutory mission.
 1. The agency is unable to use appropriate regulatory tools to address a noncompliance because the agency is unaware that the noncompliance exists. Examples of violations that impact the regulatory process include the failure to:

- Receive prior NRC approval for changes in licensed activities
 - Notify NRC of changes in licensed activities
 - Perform 10 CFR 50.59 analyses
 - Provide the notice required by 10 CFR 150.20
 - Meet the requirement associated with the change process provisions in 10 CFR 50.54(a) (involving quality assurance programs), 10 CFR 50.54(p) (involving safeguards plans), 10 CFR 50.54(q) (involving emergency plans)
 - Notify the NRC pursuant to the Commission's requirements
2. In determining the significance of a violation that impacts the NRC's regulatory process, the NRC will consider:
- (a) The position and responsibilities of the person involved in the execution of licensed activities relative to those activities or the use of licensed materials, regardless of the individual's job title or whether the individual is working directly for the licensee or working for a contractor engaged in activities associated with licensed activities.
- (b) The significance of the underlying violation, i.e., when an issue is being considered for enforcement action because it impacts the NRC's regulatory process, it should first be reviewed on its own merits to ensure that its severity level is characterized appropriately given the significance of the particular violation.
- (c) Whether the failure actually impeded or influenced regulatory action and or invalidated the licensing basis.
- (1) Unless otherwise categorized in the Supplements to the [Enforcement Policy](#), the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance and the circumstances surrounding the matter that should have been reported.
- (2) The severity level of an untimely report, in contrast to no report, may or may not be reduced depending on the circumstances surrounding the matter, e.g., if the NRC had received the report in a timely manner, would the NRC actually have taken an action based on the report.

☞ Reporting failures is important. Many of the surveillance, quality control, and auditing systems on which both the NRC and its licensees rely in order to monitor compliance with safety standards, are based primarily on complete, accurate, and timely recordkeeping and reporting. Therefore, the NRC may consider a licensee's failure to make a required report that impedes the NRC's ability to take regulatory action, even if that failure was inadvertent or did not result in an actual consequence, to be significant.

- f. **Willfulness.** Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor.
1. Willful violations cannot be tolerated by either the Commission or a licensee. Therefore, a violation involving willfulness may be considered more significant than the underlying noncompliance.
 2. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances of the violation in order to create a deterrent effect within the licensee's organization and contract support. The relative weight given to each of the following factors in arriving at the significance assessment will be dependent on the circumstances of the violation:
 - (a) The position and responsibilities of the person involved in the execution of licensed activities relative to those activities or the use of licensed materials.
 - (b) Notwithstanding an individual's job title or whether the individual is working directly for the licensee or working for a contractor engaged in activities associated with licensed activities, several factors should be considered when determining the severity level of a willful violation, including:
 - (1) Whether the individual has the formal or informal authority to direct the actions of others;
 - (2) Whether the individual is, in fact, directing the actions of others; and
 - (3) Whether the individual used his/her position to facilitate the violation, e.g., providing incomplete or inaccurate information or suppressing audit findings.
 - (c) The significance of any underlying violation. Each issue being considered for enforcement action that includes willfulness should first be reviewed on its own merits to ensure that its severity level is characterized appropriately given the significance of the particular violation.
 - (d) The intent of the violator.
 - (1) Willfulness embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements.
 - (2) Willfulness does not include acts which do not rise to the level of careless disregard, e.g., negligence or inadvertent clerical errors in a document submitted to the NRC.

✓ All willful violations must be coordinated with OE.

- (e) The economic or other advantage, if any, gained by the individual or for the company, as a result of the violation. The avoidance of a negative consequence can be considered a benefit.

2.5 Assigning Severity Levels

- a. Severity levels are used to:
 - 1. Indicate the significance of a violation, except when the issue involved is assessed through the Significance Determination Process (SDP); and
 - 2. Determine the appropriate enforcement action to be taken.
- b. The Enforcement Policy establishes four severity levels:
 - 1. Severity Level I (most significant)
 - 2. Severity Level II (very significant)
 - 3. Severity Level III (significant)
 - 4. Severity Level IV (least significant but more than minor; not significant based on risk)
- c. Severity Level I and II violations:
 - 1. Are considered to be “escalated enforcement actions.” This designation reflects the level of regulatory concern associated with the violation.
 - 2. Usually involve actions with actual or high potential to have serious consequences on public health and safety or the common defense and security.
- d. Severity Level III violations are also considered to be “escalated enforcement actions.” While not as significant as Severity Level I and II violations, Severity Level III violations are significant enough to warrant consideration of a civil penalty.
- e. Although Severity Level IV violations are not as significant based on risk, assigning this severity level does not mean that a violation has no risk significance.
- f. The Commission recognizes that there are other violations of minor safety or environmental concern that are below the level of significance of Severity Level IV violations.
 - 1. Although certain violations may be designated as minor, licensees must correct them.
 - 2. Such violations:
 - (a) Do not generally warrant documentation in inspection reports or inspection records;

- (b) Do not warrant enforcement action; and
- (c) To the extent that they are described in inspection reports or inspection records, will be noted as violations of minor significance that are not subject to enforcement action.

2.6 Using Enforcement Policy Supplements

The Supplements in the Enforcement Policy provide examples of violations in the various activity areas subject to enforcement action.

- a. Supplements I through VIII contain guidance for determining severity levels. The examples in the Supplements are neither exhaustive nor controlling. Generally, if a violation fits an example contained in a Supplement, it is evaluated at that severity level. Application of this guidance ensures programmatic consistency throughout the regions. The Supplements address:

- Supplement I: Reactor Operations
- Supplement II: Part 50 Facilities
- Supplement III: Safeguards
- Supplement IV: Health Physics
- Supplement V: Transportation
- Supplement VI: Fuel Cycle and Materials Operations
- Supplement VII: Miscellaneous Matters
- Supplement VIII: Emergency Preparedness

- b. If the region believes that a different severity level categorization is warranted and the circumstances are not addressed by this Manual, the region should either:

1. Explain the rationale in the Panel Worksheet when the case is sent to headquarters; or
2. Consult with OE prior to issuing the enforcement action in the region.

☞ Consistent with the guiding principles for assessing significance, the severity level for a violation may be increased if it includes willfulness.

- c. If the staff chooses to categorize a violation at a severity level different from the examples in the Supplements, the cover letter to the licensee should address the staff's rationale for categorizing the severity level.
- d. If a violation does not fit an example in the Supplements, it should be assigned a severity level:
 1. Commensurate with its safety significance; and
 2. Informed by similar violations addressed in the Supplements.

2.7 Using Information From the Significance Determination Process (SDP)

- a. For certain types of violations at commercial nuclear power plants, the enforcement process relies on information from the [reactor oversight process's \(ROP\) Significance Determination Process \(SDP\)](#).
 1. The SDP is used to evaluate the potential safety significance of inspection findings to provide a risk-informed framework for discussing and communicating the significance of such findings with licensees.
 2. The final disposition of violations associated with findings that have been evaluated through the SDP is contingent on the risk significance attributed to the findings.
 3. Guidance on the SDP is described in NRC [Inspection Manual Chapter 0609, "Significance Determination Process."](#)
- b. Depending on their significance, inspection findings are assigned the following colors:
 1. Red (high safety significance)
 2. Yellow (substantial safety significance)
 3. White (low to moderate safety significance)
 4. Green (very low safety significance)
- b. The ROP uses an Agency Action Matrix to determine the appropriate agency response to these findings.
- c. Findings are sometimes associated with one or more violations. If the violations are more than minor (i.e., red, yellow, white, or green):
 1. They will be documented and dispositioned as non-cited violations (NCVs) or NOVs, depending on their safety significance.
 2. Instead of using civil penalties as a deterrent, the staff will use other regulatory responses based on the significance of the issue, e.g.:
 - (a) Increased inspections
 - (b) Demands for Information (DFIs)
 - (c) Orders

- d. For issues with actual consequences:
 1. Traditional enforcement will be considered, i.e., assigning a severity level with or without a civil penalty.
 2. Depending on the risk significance of the issue, civil penalties will also be considered for issues involving potential safety consequences. Examples of issues with actual consequences include, but are not limited to:
 - Exposures to the public or plant personnel above regulatory limits
 - Failures to make required notifications that impact the ability of Federal, State, or local agencies to respond to actual emergencies
 - Transportation events
 - Substantial releases of radioactive material
- e. Under the ROP, traditional enforcement will also be used to address violations that are willful or that have the potential for impacting the regulatory process.
 1. The use of civil penalties in these instances remains appropriate as a deterrent.
 2. Risk insights can inform the significance determination of the underlying violation or issue.
 3. The staff should consider the SDP in conjunction with the Enforcement Policy and the guidance included in the Enforcement Policy Supplements when determining the appropriate severity level.

2.8 Using Risk Significance

- a. Risk is a relevant consideration in enforcement decisions concerning significance, severity levels, appropriateness of sanctions, and the exercise of enforcement discretion.
- b. At each enforcement or Significance Determination Process/Enforcement Review Panel (SERP) or panel, OE will ask whether the violation involves a risk significant issue.
- c. The region is expected to have a position on risk significance or be able to describe what steps should be taken to obtain a view on risk if the matter may be risk significant.
 1. Regional input is normally the first step; however, this should not be considered only a regional responsibility.
 2. NRR should be prepared to provide its view on the risk associated with the violation(s) at issue.
- d. To the extent known, the licensee's position on risk for the violations at issue should be discussed.

- e. Following the decision at the SERP or enforcement panel to pursue escalated enforcement on a particular issue where risk may be relevant to the enforcement decision, an assignment will be made to the region or headquarters, as appropriate, to obtain additional risk information as necessary. A repanel will be held as warranted.
- f. Assuming the event is of sufficiently increased risk significance to warrant escalated action, generally the issue of [risk significance](#) should be addressed in the correspondence with the licensee that arranges a predecisional enforcement conference or regulatory conference or in the “choice letter,” i.e., we should note that the apparent violations appear to be risk significant and that if the licensee differs in that view, the licensee should provide a brief explanation of its position.
- g. Generally conferences should be held for risk significant cases.
- h. The staff recognizes the uncertainties associated with risk assessment.
 1. PRA models utilized by the staff and licensees vary in quality, creating the potential for differing views on the risk significance of events. In addition, some PRA limitations do exist, particularly in the area of human reliability analysis. In utilizing the results of PRA, generally the staff should not base an enforcement decision wholly on quantitative risk numbers; rather, risk significance should be one factor to be considered in determining the final enforcement action to take.
 2. In determining the appropriate enforcement action, the staff should continue to balance risk information against the guidance currently provided in the Enforcement Policy and the Enforcement Policy Supplements.

☞ Some reactor cases involve issues or events that do not lend themselves to PRA insights. For example security, health physics, and emergency preparedness issues are typically not amenable to current methods of risk assessment. In these cases, risk insights from a PRA perspective will not be needed.
 3. The staff should routinely consider the risk implication of each reactor case considered for escalated action. Depending on the circumstances of the case, this assessment may be:
 - (a) Qualitative, relying primarily on engineering judgment based on qualitative risk insights;
 - (b) Quantitative risk analysis; or
 - (c) A combination of the two.

4. If the staff uses specific, quantitative PRA results or qualitative risk insights to support an enforcement decision, it should be reviewed by an NRC PRA specialist prior to issuance of the action, generally the Senior Reactor Analysts (SRAs).
 - (a) The Regional SRA is the preferred point for this review, due to the plant specific design and operational information available to the regional staff.

☛ The region should, to the extent practical, use the SRAs to assist them. SRAs should be consulted for risk significance insights prior to each respective regional enforcement panel, in order for the panel to have some assessment of the risk significance of the events discussed. Assistance from Research should also be sought, as needed. OE is available to assist the region in obtaining headquarters assistance in this effort.
 - (b) Any quantitative PRA results provided as a basis for an enforcement action should explicitly reference the source (e.g., IPE, specific analysis) so that all assumptions, conditions, and methods are retrievable for subsequent review, if needed. The basis for qualitative assessment should be briefly described.
- i. Judgment must be exercised in the use of risk significance as a factor in decisions regarding the appropriateness of the sanction.
 1. In order to convey the appropriate regulatory message, there may be cases where, due to increased risk significance, it is appropriate to escalate the severity level and the sanction.
 2. Discretion may be warranted to reach the proper enforcement action. Based on risk information it may be warranted to treat violations normally considered a Severity Level IV violation at a higher severity level. It may also be appropriate to consider a lower severity level or enforcement action for issues that have low risk significance.
 - (a) Low risk does not excuse noncompliance.
 - (b) If a licensee believes an issue is of low risk and not worthy of being a requirement, the licensee may seek a change to the requirement. However, until the requirement is changed, compliance is required.

2.9 Factors That do Not Affect Significance

- a. When determining significance the following items are generally not considered unless they are part of the violation itself:
 1. Whether the licensee finds and reports a problem; and
 2. Whether the licensee takes prompt and extensive corrective actions.

- b. The significance of a violation should not be increased simply because the violation is repetitive.
 - 1. Even when a trend in a specific program area that has safety significance exists, the staff should not view the significance of a group of related programmatic violations as being greater than the individual violations (i.e., do not aggregate the violations to increase significance).
 - 2. A trend in a specific program area may be considered in developing the appropriate enforcement action and agency response (increased inspections, management meetings, etc.); however, it should not be used to increase significance.
- c. The following are examples of additional actions that should not be considered in determining the significance of a violation:
 - 1. The actions of a public utility commission or other State or local regulatory agency in response to a proposed NRC enforcement action; and
 - 2. The possible impact from the reaction of a public utility commission or other State or local regulatory agency, or nature and context of an order, e.g., not allowing recovery of the cost of a civil penalty or cost of the replacement power for an outage necessitated by the violations at issue (NOTE: If a State regulatory agency has taken enforcement action against a licensee for a transportation issue, the NRC should consider that action before determining appropriate enforcement action).

2.10 Minor Violations

- a. **Minor violations** are below the significance of Severity Level IV violations and violations associated with green inspection findings and are not the subject of formal enforcement action.
- b. Issues that represent isolated (i.e., “isolated” in that based on a reasonable effort, the staff determines that the issue is not recurring nor is it indicative of a programmatic issue such as inadequate supervision, resources, etc.) failures to implement a requirement and insignificant safety or regulatory impact should normally be categorized as minor violations.

✓ Inspectors should discuss minor violations with licensees (typically during the exit meeting) so that licensees may take appropriate corrective actions. This is especially important when a minor violation is related to an allegation because the close-out letter to the alleged informs the alleged that the minor violation has been corrected.
- c. As described in NRC Inspection Manual Chapter 0610, minor violations are, by their very nature, minor issues with little or no safety consequences. While licensees must correct these minor violations, generally they do not warrant documentation in inspection reports or inspections records and do not warrant enforcement action.

d. There is no set rule as to what is minor and what is not, i.e., the determination that an issue is minor will depend on the circumstances of the particular issue. The following are some examples of different categories of minor violations:

1. Record keeping issues: Minor violations involve issues that do not preclude the licensee from being able to take appropriate action on safety-related matters; or properly assessing, auditing, or otherwise evaluating the licensee's safety-related activities, e.g.:

Post-maintenance testing was performed on ten glycol air handling units during an outage of a Westinghouse ice condenser facility. All the required tests were performed, based on statements from licensee workers, but there was no record that an actual air flow test was conducted on two of the units. Based on indications in the control room, both air handling units had comparable air flow to those that had documented test results, and the ice condenser technical specification required air temperatures were all well-within specifications.

The violation: Criterion XI of 10 CFR Part 50, Appendix B, requires test results to be documented and evaluated to assure that test requirements are satisfied.

Minor because: This was a record keeping issue of low significance. There was reasonable assurance that test requirements were met as evidenced by actual air flow being satisfactory and technical specification temperatures being within limits.

Not minor if: The air flow in the two units was determined to be degraded during subsequent testing.

2. Licensee administrative requirement/limit issues: Minor violations involve isolated cases where licensees exceed administrative limits, i.e., limits that licensees impose upon themselves that are more conservative than NRC's regulatory limits, e.g.:

NRC inspectors identified that a high radiation door was not locked as required by plant procedures. While the licensee's procedurally controlled administrative limit for area postings was exceeded, the door to the area was conservatively classified and did not exceed regulatory radiation levels to warrant posting as a locked high radiation area.

The violation: Plant procedures require that activities shall be accomplished in accordance with procedures.

Minor because: The requirement was a licensee administrative limit. The area was conservatively posted and no regulatory limits requiring posting were exceeded.

Not minor if: The area radiation levels exceeded the regulatory radiation levels such that the area should have been a locked high radiation area.

3. Nonsignificant dimensional, time, calculation, or drawing discrepancies: Minor violations would be characterized by minor discrepant values referred to in either a licensee's Final Safety Analysis Report (FSAR) or other design documents, e.g.:

A temporary modification was installed on one of two redundant component cooling water system surge tanks to restore seismic qualification. The supporting calculations, which did not receive a second-level review, were found to contain technical errors that did not result in the train being inoperable.

The violation: Design control measures for verifying or checking the adequacy of design were not implemented. Design changes, including field changes, are required to be subjected to design control measures commensurate with those applied to the original design.

Minor because: These are non-significant calculation errors. The calculation errors were minor and the installed modification restored seismic qualification of the tank.

No minor if: The calculation errors were significant enough that the modification required revision or rework to correctly resolve seismic concerns.

4. Isolated procedural errors: Minor violations include isolated procedural errors or inadequate procedures that have no impact on safety equipment, e.g.:

While performing a reactor protection procedure, an operator inadvertently operated the bypass switch which caused a single channel trip condition. The operator failed to follow the procedure and adequately self-check to ensure the correct switch was manipulated.

The violation: Criterion V of 10 CFR Part 50, Appendix B, requires that activities be accomplished in accordance with procedures.

Minor because: This was an isolated procedural error and there were no safety consequences.

Not minor if: The error caused a reactor trip or other transient.

5. Work in progress findings: For enforcement purposes, these minor violations include violations occurring and identified in the course of performing work or maintenance on equipment that is out of service or declared inoperable per the technical specifications and has no safety consequences, and the violation is identified and corrected prior to returning the equipment to service and/or declaring the equipment operable. Errors that occur on non-designated pieces of equipment, such as inadvertently or mistakenly operating a different train of the equipment, or errors that

cause another requirement (e.g., technical specifications) to be violated, are not included as minor, e.g.:

Prior to system restoration following modification, the licensee determined that the modification package that replaced the spent fuel pool cooling system suction piping did not include the siphon hole called for by the original system design. The siphon hole was not installed. Due to the location of the piping, a siphoning event would lower spent fuel pool level several feet, but would not uncover the stored fuel, nor significantly increase radiation levels in the spent fuel pool area.

The violation: The pipe design was not correctly translated into proper work instructions and drawings.

Minor because: This was a work in progress. The error was identified and corrected during turnover of the modification prior to system restoration.

Not minor if: The system was returned to service without installation of the siphon hole or completion of an evaluation to remove the requirement for the siphon hole.

6. Minor changes to requirements: Minor violations include the failure to meet 10 CFR 50.59 requirements that involve a change to the FSAR description or procedure, or involve a test or experiment not described in the FSAR, where there was no reasonable likelihood that the change would ever require NRC approval per 10 CFR 50.59, e.g.:

The licensee developed and approved a preventive maintenance task that should have required that a change be made to the plant technical specifications. A 10 CFR 50.59 screening was not performed. When requested to perform the task, control room operators identified that the task would violate technical specifications and did not perform it.

The violation: A task was changed that would require a change to the technical specifications without first completing a 10 CFR 50.59 screening.

Minor because: The licensee's established process identified the problem prior to implementation. The problem did not affect any equipment and had no safety consequences.

Not minor if: The task had been performed.

- e. Violations that involve issues that are considered significant enough to be utilized in the formal NRC assessment process are not minor.

- f. [NRC Inspection Manual Chapter 0610, Appendix B, "Thresholds for Documentation,"](#) provides guidance in the form of Group 1 questions to determine whether issues are more than minor. These questions can be used with the following guidance to determine whether identified violations are minor. Where a licensee does not take corrective action for a minor violation, willfully commits a minor violation, or the NRC has indications that the minor violation has occurred repeatedly, the matter should be considered more than minor, i.e., the matter should be categorized at least at Severity Level IV or associated with a green inspection finding and dispositioned in an NOV or NCV, as appropriate.

2.11 Tracking Enforcement and SDP Issues

The staff tracks various enforcement and SDP issues through the use of OE's Enforcement Action Tracking System (EATS). Under this system, enforcement action (EA) numbers are assigned to a variety of issues.

2.11.1 Enforcement Action (EA) Numbers

- a. EA numbers are assigned by OE to administratively track and file a variety of enforcement issues, including SDP issues that are addressed in enforcement or SERP
- b. EA numbers are assigned to program office orders imposing additional regulatory requirements.
- c. EA numbers are generally assigned when cases are discussed during enforcement or SERP panels, whether or not the case ultimately results in enforcement action. During or subsequent to a SERP or enforcement panel, OE will assign an EA number to:
1. Each individual issue being considered for enforcement action; or
 2. Each individual inspection finding being assessed by the SDP that does not have enforcement implications.
- ☛ OE will assign an EA number to each enforcement issue associated with a red, yellow, or white SDP finding. This enables OE to track violation/problem assessments.

 - If additional related escalated violations or problems or SDP issues are identified subsequent to an enforcement or SERP panel, additional EA numbers will be assigned.
 - If violations, problems, or issues are dropped subsequent to an enforcement or SERP panel, the related EA numbers should be closed.
- d. EA numbers are placed on the SDP/EA Request and Strategy Form and forwarded to the region that initiated the action for review and comments.
- e. EA numbers are assigned sequentially according to the year of issuance (e.g., EA-00-011). Once an EA number has been assigned to a proposed violation, all subsequent documents involving the violation should include the complete five-digit EA number.

- f. EA numbers are assigned to the following:
1. Any issue that is discussed during a SERP or enforcement panel, regardless of whether the issue ultimately results in an enforcement action.
 2. Any case in which a predecisional enforcement conference or Regulatory Conference is scheduled.
 3. Any case in which the region issues a letter giving a licensee the choice of responding to apparent violations or requesting a predecisional enforcement conference (i.e., "choice letter"), if not already issued.
 4. All escalated enforcement issues. This includes those cases that require headquarter's review prior to issuance, as well as those that do not. Orders that impose civil penalties retain the same EA number as the action that proposed the civil penalty.

☛ Multi-sanction cases receive individual EA numbers for each sanction, e.g., a case that includes both a proposed civil penalty and a separate (stand-alone) Demand For Information (DFI) would have one EA number for the proposed civil penalty and a separate EA number for the DFI.
 5. Any case involving willfulness whether or not escalated or non-escalated enforcement action is to be issued, including willful cases where the staff proposes to exercise discretion and refrain from issuing enforcement action (e.g., NCV).
 6. Severity Level IV NOVs and NOVs associated with green SDP findings involving power reactors, where an NCV is determined to be inappropriate.
 7. Non-escalated enforcement actions requiring headquarter's review, including:
 - (a) Any enforcement action requiring Commission approval;
 - (b) Any non-escalated enforcement action involving an individual;
 - (c) Any non-escalated enforcement action which, by the examples in the Supplements, could be categorized at Severity Level III or characterized as greater than green by the SDP;
 - (d) Any non-escalated enforcement action related to a current proposed escalated enforcement action, unless there has been prior approval for separate issuance by the Director, OE;
 - (f) Any case involving the mitigation of enforcement sanctions as addressed in the Enforcement Policy;

- (g) Any case in which the staff proposes to exercise discretion and refrain from issuing an enforcement action for a transportation cask contamination violation that could be categorized at Severity Level III or above.
- (h) Any case in which a [Notice of Enforcement Discretion \(NOED\)](#) is issued, and the root cause that results in the need to request the NOED was a violation in itself (regardless of whether the violation will be dispositioned as an NCV or in an NOV). The EA number should be included on the subsequent enforcement action and should not be included on the NOED when it is issued.
- (i) Any case involving an OI report where enforcement action appears warranted (i.e., whether the action is based on willfulness or not and whether the action is escalated, non-escalated, or an NCV). OE will assign an EA number to the case when it determines enforcement action is warranted or when it requests an OGC analysis of whether enforcement action is supportable.
- (j) Any case in which the staff proposes to issue a DFI. The DFI should be given an individual EA number even if issued together with another enforcement action. If another enforcement action is issued after the response to the DFI which addresses the subject matter of the original DFI, a new EA number is also to be obtained.
- (k) Any case (during review and approval) in which the region proposes to issue any action to an individual (i.e., NOV, civil penalty, DFI, order, close out letter, Letter of Reprimand (LOR) or similar letter)
- (l) Any case (during review and approval) in which the NRC proposes to issue an enforcement action (regardless of severity level) to a licensed operator for failure to comply with a facility licensee's fitness-for-duty (FFD) program.
- (m) Any case in which the NRC issues a "chilling effect" letter (CEL) for discrimination for engaging in protected activities. The region should request an EA number when it is determined that a CEL should be issued. The EA will be closed upon receipt of the licensee's response to the CEL. Any subsequent enforcement action proposed will be given a new EA number.
- (n) Any case referred to DOJ in which the NRC is considering escalated enforcement action.
- (o) Any disputed minor violation, Severity Level IV violation, or violation associated with a green SDP finding (regardless of whether it was dispositioned as an NCV or in an NOV) that did not have an EA number when it was originally dispositioned. Actions (including escalated) that were originally issued with an EA number should be tracked using the existing EA number. Appropriate keywords should be used to identify the violation as disputed in EATS.

- (p) An order (issued by the program office) imposing additional requirements beyond the existing regulatory requirements (e.g., 2002 security orders). One EA number may be used in the event the same order is issued to multiple licensees. The program office should contact OE (normally through their office Enforcement Coordinator) as soon as they believe an order should be issued.
- (q) Any issue that OE, the region, or the program office believes is warranted.

2.11.2 Preparing and Maintaining SDP/EA Request & Strategy Forms

- a. SDP/EA Request & Strategy Forms (Strategy Forms) are used to:
 - 1. Summarize the agency's strategy for dispositioning SDP and enforcement issues;
 - 2. Serve as aids during case deliberations;
 - 3. Record the conduct of enforcement or SDP meetings and discussions about the strategy that was used; and
 - 4. Document the basis for any change in enforcement or SDP approach.
- b. To ensure that Strategy Forms fully serve their purposes, the following guidance should be implemented:
 - 1. Every issue paneled in a SERP or enforcement panel will get an EA number whether or not the case ultimately results in enforcement action, e.g., an inspection finding characterized as white by the SDP will be assigned an EA number even if there are no violations associated with it. If a violation is associated with the white issue, only one EA number needs to be issued to address the case.
 - 2. The OE Enforcement Specialist assigned to the case should prepare a Strategy Form following each panel. In addition to the necessary information to support EATS, the form should briefly state:
 - (a) What was agreed to at the panel;
 - (b) If there was not agreement at the panel, a brief description of the disagreement and what actions are being taken to resolve the difference;
 - (c) Whether actions need to be taken to obtain the views of others (briefing of the managers in the normal decision chain need not be stated);
 - (d) Whether additional investigation, interviews, or inspection activities are needed;
 - (e) Whether there is a need to revisit the agreement after further reviews of the evidence or research is conducted;

- (f) The date the violation occurred (required for tracking the Statute of Limitations); and
 - (g) Any other actions needed to reach an enforcement decision.
3. For cases that have not been paneled but which require an EA number, the region will submit to OE sufficient information such that the Enforcement Specialist can prepare a Strategy Form.
 4. The Strategy Form should list all panel attendees.
 5. Subsequent to an enforcement or SERP panel, OE will provide the Strategy Form to all panel participants.
 6. The Strategy Form should, in general, be completed within five working days of the initial panel, as well as any subsequent panel, enforcement caucus, or other substantiative communication where the enforcement strategy is revisited or modified.
 7. Strategy Forms are entered into ADAMS and are non-publicly available.
 8. Copies of the Strategy Forms are retained by OE in the official EA case files with regional work sheets and other background documents until the file is placed in storage (usually 2 years after the case is closed), at which time the Forms may be discarded.
 9. After a subsequent panel, caucus, or substantiative discussion, the Strategy Form should be updated by noting the original EA number, the date of the meeting or discussion, the form revision number (i.e., "1", "2", "3") and the outcome of the meeting, including a brief explanation of the reason for any change in strategy. The background information need not be restated unless it has changed. The updated Strategy Form is approved, distributed, and filed like the original Strategy Form.

2.11.3 Individual Action (IA) Numbers

- a. Use of Individual Action (IA) numbers enables the NRC to maintain a list of individuals who have been considered for individual enforcement action.
- b. IA numbers are assigned to any case in which correspondence is addressed to an individual concerning potential enforcement action; however, the region should use an EA number for the review and approval stages and get an IA number from OE when the correspondence is ready to be issued.
- c. When an IA number is assigned, all external correspondence is included in a separate system of records (NRC-3, "Enforcement Actions Against Individuals"). By the notice establishing this system of records, individual actions and correspondence with individuals may be maintained by personal identifier in NRC offices.

- d. IA numbers should be used:
1. On all close-out letters and conference or choice letters to an individual; and
 2. Throughout an individual's case, including any subsequent actions, e.g., Letter of Reprimand (LOR), Non-Cited Violation (NCV), NOV, civil penalty, DFI, order, or close-out letter. This includes NOVs issued to licensed operators for FFD violations, (regardless of severity level).
- ☞ IA numbers are assigned by OE to administratively track and file **all** correspondence issued to an individual, if that individual is being considered for or has been issued an enforcement action. The EA number associated with the action should **not** appear on the correspondence issued with an IA number and should **not** appear in the ADAMS profile.
- e. Like the original correspondence, the region should use the EA number for the draft action through the review and approval stages and include the IA number on the final action when it is ready to be issued. The EA file should be closed upon issuing the final IA action.
- f. IA numbers are **not** assigned to cases in which a DFI or order involving an individual is issued to the licensee, unless the correspondence is directed to an individual concerning his or her performance, in which case, paragraph "a." applies.

2.12 Enforcement and Significance Determination Process Enforcement Review Panel (SERP) Panels

- a. **Enforcement panels** are meetings to discuss and reach agreement on an enforcement approach for certain violations of NRC requirements. Enforcement panels assure consistency in the process for characterizing violations and issuing enforcement actions.
- b. **SERPs** are meetings to discuss and reach agreement on the significance of inspection findings at power reactors that appear to be more significant than green under the SDP.
1. For SDP findings that have an associated violation, the panel will discuss and reach agreement on an enforcement approach for the related violation.
 2. Although SERPs are similar to enforcement panels in many respects, specific guidance for SERPs is included in NRC Inspection Manual Chapter 0609.
- c. When a regional office does not believe a panel is necessary for one of the items listed below:
1. The Regional Enforcement Coordinator should consult with OE.

2. The Director, OE, may make exceptions to the guidance in this Manual in cases where the proposed resolution of the issue is noncontroversial and would be consistent with recent precedent and current policy.
- d. An Office Director or Regional Administrator may request a panel to discuss any issue that is not specifically included in the items listed below. Otherwise, the following types of violations and related issues should be brought to an enforcement panel unless specifically exempted by current enforcement guidance in the Manual or an EGM, i.e., when enforcement guidance gives the regions the authority to classify a potentially escalated violation at Severity Level IV based on specific criteria, and those criteria are met, the issue does not need to be brought to a panel.
- e. Unless otherwise specified, a panel should be held for the following items for all types of NRC licensees:
1. Violations for which escalated enforcement action is recommended, i.e., any violation for which an order, an NOV at Severity Level I, II or III, an NOV associated with a red, yellow, or white SDP finding, or a civil penalty is being recommended.
 2. Violations involving a finding of wrongdoing or discrimination by OI, a licensee or DOL, including cases that OI has referred to DOJ. These violations should be discussed regardless of the apparent severity level.
 3. Violations normally classified at Severity Level I, II or III or associated with a red, yellow, or white SDP finding for which enforcement discretion in accordance with the Enforcement Policy is being recommended. OE should be consulted by telephone for Severity Level IV issues.
 4. Violations normally classified at Severity Level I, II or III or associated with a red, yellow, or white SDP finding for which non-escalated action is being recommended.
 5. Cases in which enforcement action is being considered against an individual, including a licensed reactor operator, regardless of the severity level of the violation.
 6. Cases in which a DFI is being recommended prior to making a final enforcement decision.
 7. Cases where information obtained during a predecisional enforcement conference or in response to a choice letter or DFI needs to be considered in determining enforcement action.
 8. Violations at power reactors where a departure from the NCV policy is proposed, i.e., to issue an NOV when the NCV criteria are met and vice versa.
 9. Licensee-disputed violations and violations of 10 CFR Part 55 that cannot be resolved via coordination between the involved offices.
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2.12.1 Participating in Panels

Participation in enforcement panels should be in accordance with the following guidelines:

- a. **Region:** The region is generally responsible for chairing the panel and presenting the pertinent facts of the case except when the program office is responsible for the allegation or inspection activity, in which case the program office assumes the role of the regional office.
 1. The region should notify participants one week prior to the panel.
 2. In addition to OE, the region should notify the NRR, NMSS, or NSIR Enforcement Coordinator, as appropriate. The region should also notify the Assistant General Counsel for Materials Litigation and Enforcement for cases involving civil penalties, willfulness, or other legal issues, as well as the applicable OI investigator and Regional Field Office Director for cases involving willfulness.
 3. The regions may choose to conduct internal meetings prior to the scheduled enforcement panel as appropriate. These internal meetings are often useful to review the details of the incident to focus the subsequent panel discussion on the major issues and for the region to develop its position for efficient presentation during the panel call. The OE Enforcement Specialist will participate in these meetings as an observer upon request by the region.
 4. It is expected that the region will be represented on the panel call by a person at the Division Director level or higher. It is important to recognize that while the regional participants provide a recommendation to the Regional Administrator, their position does not represent the final region position.
- b. **OE:** To achieve timely decision-making, either the Director, Deputy Director, or Section Chief, EPPO, will normally participate in panels in addition to the OE Enforcement Specialist.
 1. OE should help facilitate discussions and should focus on ensuring that violations are accurate and that strategies are consistent with the Enforcement Policy, EGMs, other applicable guidance, and past practice.
- c. **Program Office:** Except when the program office is responsible for the allegation or inspection activity, the program offices should be invited to participate in panels; however, attendance is not mandatory. When the program office is not responsible for chairing the panel:
 1. The NRR, NMSS, and NSIR Enforcement Coordinators are responsible for arranging for participation by the appropriate and necessary program office staff and for ensuring that those participating on the panel have briefing materials in advance of the meeting.

2. NRC Manual Chapter 0609, Attachment 0609.01 describes which organization should participate in a SERP.
3. In evaluating the appropriateness of the proposed enforcement strategy, program office participants:
 - (a) Should focus on whether the violations are factually and technically accurate and the enforcement strategy is consistent with the program office's policy, guidance, position, or past practice.
 - (b) Are responsible for elevating their concerns to program office management (the Associate Director for Operating Reactor Oversight and Licensing for NRR cases, and the applicable Division Director for NMSS and NSIR cases), if they disagree with the enforcement strategy discussed during the panel.
- d. **OGC/OI:** OGC (Assistant General Counsel for Materials Litigation and Enforcement) should be invited to panels involving civil penalties, willfulness and other cases with potential issues of legal significance. OI (applicable investigator and Regional Field Office Director) should be invited to panels involving willfulness.

2.12.2 Preparing for Panels

- a. In order for enforcement panels to be effective, the regions should ensure that participants are appropriately prepared.

✓ The regions should send SDP-related information to OE, the NRR Enforcement Coordinator, and the NSIR Enforcement Coordinator, as appropriate, at least 72 hours in advance of a SERP (see [Inspection Manual](#) Chapter 0609 for specific details on SDP-related information).

- b. It is recognized that these meetings are conducted during the preliminary stages of the enforcement process; however:

1. Sufficient information should be gathered to support the meeting's purpose, i.e., to discuss the apparent violations, severity levels, violation groupings, escalated history, preliminary civil penalty assessment, etc.

2. If sufficient information is not available, the enforcement panel should be rescheduled.

✓ The regions should send briefing materials to OE (e-mail "OEMAIL"), OGC, the NRR, NMSS, and NSIR Enforcement Coordinator, as appropriate. The EDO Regional Coordinator should also receive a copy of briefing materials. The materials should be provided at least 72 hours in advance of the meeting.

- c. Briefing materials for proposed actions should include:

1. A draft inspection report (or draft report excerpt or other draft document that addresses the circumstances of the case);
 2. Other available information, e.g., an LER;
 3. A case summary (the region may use the SERP Panel Worksheet (Panel Worksheet) (included in Appendix D) or comparable summary);
 4. A draft NOV;
 5. Factors for the Sanction in Actions Against Individuals (see list of factors in Appendix D), if applicable; and
- d. Briefing information for an imposition should include the licensee's response to the proposed civil penalty action and the region's assessment of it.
- e. All briefing materials should be appropriately marked as predecisional information. Briefing materials sent to OE should either be faxed or sent by e-mail to "OEMAIL" as well as to the individual OE participants.

2.12.3 Panel Outcome

- a. Depending on the discussions in the enforcement panel, the staff will determine one of several outcomes.
1. **If the staff concludes that no violation occurred:**
 - (a) OE will assign an EA number and document the disposition of the issue by completing the Strategy Form (no violation or SDP finding without a violation).
 - (b) OE will send the form to the region and make it available to the program offices, OI, and OGC, as applicable.
 2. **If the staff concludes that non-escalated enforcement should be proposed:**
 - (a) OE will assign an EA number to the case and document the disposition of the issue by completing the Strategy Form (including why an NOV vs. an NCV was issued).
 - (b) OE will send the form to the region and make it available to the program offices, OI, and OGC, as applicable.
 - (c) The regions may generally issue the enforcement action without prior coordination or review with OE.
 - (d) In special cases, OE may request that the action be coordinated or reviewed prior to issuance.

3. **If the staff concludes that a predecisional enforcement conference should be conducted**, the region should issue the inspection report two weeks prior to the conference. Appendix B contains a template that should be used to develop the transmittal letter.
4. **If the staff concludes that a predecisional enforcement conference need not be conducted, but that additional information about the licensee's corrective action is necessary to decide on enforcement action or that a civil penalty is warranted**, the region:
 - (a) Should proceed to issue the inspection report requesting a licensee response. Appendix B contains a template that should be used to develop the choice letter.
 - (b) Issue a choice letter, if appropriate:
 - (1) Issuing a choice letter is appropriate where a licensee appears to understand the significance of the violation and the need for corrective action at the inspection exit, but has not informed the NRC inspector of the corrective actions the licensee has taken or plans to take subsequent to the inspection exit. This is more likely to be the case for materials licensees' inspections because inspectors are not stationed at materials facilities.
 - (2) Issuing a choice letter may provide an incentive to the licensee to develop and implement comprehensive corrective actions in order to avoid the possibility of a civil penalty.
 - (c) Following receipt of the licensee's response to the inspection report, the region should:
 - (1) Arrange for OE consultation with the OE Enforcement Specialist assigned to the case; or
 - (2) Schedule another enforcement panel, if warranted.
 - (d) The purpose of the additional consultation or panel is to provide a forum for discussion of:
 - (1) New information or perspectives that have been obtained that may warrant reconsideration of the preliminary enforcement strategy for the case, including whether a predecisional enforcement conference is necessary.
 - (2) The reasonableness of the licensee's corrective action.
 - (f) If the staff concludes that a conference is necessary, the region should arrange for a conference with the licensee as soon as possible.

- (g) If the staff concludes that a conference is not necessary, the meeting in essence evolves into an enforcement caucus meeting, whereby the staff determines the final enforcement strategy for the case.
5. **If the staff concludes that a predecisional enforcement conference need not be conducted and that sufficient information exists to conclude that a civil penalty is not warranted**, the region may choose to:
- (a) Issue the inspection report requesting a licensee response (see Appendix B which contains a template of the transmittal letter that should be used which includes an additional paragraph informing the licensee that a civil penalty does not appear warranted). This approach may reduce resource expenditures by the licensee if the licensee understands in advance that the agency does not plan to issue a civil penalty.
- (b) Following receipt of the licensee's response to the inspection report, the region should:
- (1) Arrange for OE consultation with the Enforcement Specialist assigned to the case; or
 - (2) Schedule another enforcement panel, if warranted.
- (c) The purpose of the additional consultation or panel is to provide a forum for discussion of:
- (1) New information or perspectives that have been obtained that may warrant reconsideration of the preliminary enforcement strategy for the case, including whether a predecisional enforcement conference is necessary.
 - (2) The reasonableness of the licensee's corrective action.
- (d) An enforcement conference may be necessary and should be scheduled as soon as possible, if staff concludes that the documented corrective action is not sufficiently prompt and comprehensive such that a civil penalty may be warranted.
- (1) If the staff concludes that a conference is necessary or if the licensee requests a conference, the region should arrange for a conference as soon as possible. or
 - (2) If the staff concludes that a conference is not necessary, the meeting in essence evolves into an enforcement caucus meeting, whereby the staff determines the final enforcement strategy for the case, i.e., whether the draft NOV should be modified or withdrawn.
- (e) The region may choose to make a “**choice call**” to the licensee.

- (1) In such cases, the license will be contacted by telephone and informed that the NRC does not see a need for a predecisional enforcement conference or a written response prior to issuing the enforcement action.
- (2) During the telephone call, the licensee is provided the option of attending a conference or submitting a written response to the apparent violations in the inspection report (see letter template in Appendix B that should be used to transmit the Notice of Violation (NOV) that documents the telephone conversation).
- (3) If the licensee indicates during the choice call that it does desire to have a conference or provide a written response before the NRC issues its enforcement action, then the staff should follow the applicable guidance for issuing a choice letter and then reviewing the licensee's response afterwards.

6. If the staff concludes that an additional panel or discussion is necessary:

- (a) When the staff concludes that an additional panel or discussion is necessary, the original principal panel participants should attend, if possible.

- (1) The other participants, to the extent that they might have information relevant to the issues to be discussed, should also attend, if possible.
- (2) The original participants need not be present to conduct a subsequent panel or discussion.

It is not always necessary to hold a new panel to change a past agreement recorded on a Strategy Form. OE management can agree to change an agreement through a consensus decision made during discussions outside the panel process. The decision as to whether to hold an additional panel is based on the complexity of the issue, level of controversy associated with the change, and the estimated impact on resources. For these cases, all effected parties must be included.

- (b) The region shall make available new information, guidance, or precedent, as applicable, that is influencing the discussion to change the enforcement strategy.
- (c) The region shall update the Enforcement Action Worksheet (EAW) to reflect changes in the regional recommendation.
- (d) After a subsequent panel, the Strategy Form will be updated noting the outcome of the meeting, including a brief explanation of the reason for any change in enforcement strategy and distributed so that the region, program offices, OI, and OGC are aware of the change and can comment, if desired.

- (e) Following receipt of the revised Strategy Form, it is the responsibility of the principal participants to verify that the revised strategy is acceptable to the office or region.
 - (1) The principal participants are responsible for discussing, as warranted, changes to previously agreed upon strategy with the prior panel participants from their office or region who may not have been involved in the subsequent panel or discussion.
 - (2) The regional principal participants should discuss, as warranted, the issues with OI.
 - (3) Disagreements with the revised strategy should be handled as discussed in the following paragraph.
- 7. **If, after being briefed on the enforcement panel outcome, the Regional Administrator, the Associate Director for Operating Reactor Oversight and Licensing for NRR cases, the Director, OI, the Associate General Counsel for Hearings, Enforcement, and Administration, or the applicable Division Director for NMSS or NSIR cases, disagree on enforcement strategy issues** such as severity level, SDP characterization, civil penalty assessment, or whether a predecisional enforcement conference is necessary:
 - (a) These parties should contact the Director, OE, as soon as possible, and no later than 24 hours after receiving OE's summary of the enforcement strategy documented on the Strategy Form.
 - (b) In the case of a regional disagreement, the Regional Administrator and Director, OE should confer and either resolve their differences or promptly escalate the matter to the DEDO. (Depending on the nature of the regional disagreement, OE may include the appropriate program office in the decision making process.)
 - (c) In the case of a program office disagreement, the Associate Director for Operating Reactor Oversight and Licensing for NRR cases, or the applicable Division Director for NMSS or NSIR cases, should confer with the Director, OE, and the Regional Administrator to resolve their differences or the Director, OE will promptly escalate the matter to the DEDO responsible for the Enforcement Program.
 - (d) Based on the outcome of these discussions, if warranted, OE will revise the summary of the agreed upon enforcement strategy on the Strategy Form to document the decision.
- 8. **Re-exiting:** If, as a result of the panel discussion, a substantive change is made to the apparent violations or message given at the exit, a re-exit should be held. This may be done by the branch chief by telephone.

2.13 Documenting Noncompliances

- a. Noncompliances (other than minor violations) are normally documented in inspection reports or, in certain cases involving material licensees, inspection records or by using NRC Form 591, "Safety and Compliance Inspection."
- b. Detailed guidance on preparation of inspection reports and use of inspection records is contained in the NRC Inspection Manual, Chapter 0610, "Nuclear Material Safety and Safeguards Inspection Reports," and Chapter 0612 "Power Reactor Inspection Reports." Inspection Manual, Chapters 0610 and 0612, address thresholds for documentation in inspection reports.
- ☞ If an issue is described in an inspection report in sufficient detail to conclude that a noncompliance has occurred, then that observation **must be dispositioned** as a violation, an apparent violation, or an NCV. To simply document a noncompliance as a "weakness," "licensee failure," "observed discrepancy," or similar characterization without dispositioning, it is inappropriate.
- c. The manner in which a noncompliance is documented in an inspection report or inspection records depends on how the noncompliance will be dispositioned.
1. Inspection reports or inspection records must contain a sufficiently detailed discussion of the inspection findings to substantiate the significance and support any enforcement sanction the NRC may choose to issue.
 2. The degree of detail necessary to support an enforcement action is a function of the significance and complexity of the noncompliance.
- d. With the exception of inspection reports associated with potential escalated enforcement action, generally inspection reports are to be issued within the timeliness goals established in Chapters 0610 and 0612 of the Inspection Manual (i.e., 30 calendar days after the completion of an inspection for regional or resident inspector reports and 45 calendar days after the completion of an inspection for integrated and major team inspection reports).
- e. If a noncompliance has not occurred, to avoid any confusion, it may be appropriate in certain situations to include a statement such as, "this issue does not constitute a violation of NRC requirements."

2.13.1 Documenting Minor Violations

- a. Although, in general, minor violations should not be documented, there are a very few exceptions when documentation is warranted.

☞ Although minor violations must be corrected and discussed with the licensee (normally during the inspection exit), **in general, minor violations should not be documented in inspection reports.**

- b. Documenting a minor violation may be warranted as part of closing out a Licensee Event Report (LER), where it would be obvious to a member of the public that a violation is involved (e.g., “failure to follow procedures,” in the body of the LER or as part of the title). Documentation, in this case, helps to provide public confidence that the agency has dispositioned the violation.
- c. In contrast, documenting a minor violation would not be warranted where a violation is identified because of questions raised by an inspector or because of an inspector’s training and expertise.
- d. Documenting a minor violation may be warranted if the associated technical information relates directly to an issue of agency-wide concern (e.g., to document the results of an NRC temporary instruction (TI)).
- e. To the extent that minor violations are described, they will be noted as violations of minor significance that are not subject to enforcement action, e.g.:

“Although this issue should be corrected, it constitutes a violation of minor significance that is not subject to enforcement action in accordance with Section IV of the Enforcement Policy.”
- f. Minor violations are generally not discussed in inspection report cover letters; however, documentation in the inspection report and inspection record should briefly describe the circumstances surrounding the violation. A discussion of the corrective actions is not necessary.
- g. If a licensee disputes that a minor violation is a violation, the region should respond by following the procedures in addressing a licensee’s denial of an NCV.

2.13.2 Documenting Non-Cited Violations (NCVs)

- a. In accordance with the Enforcement Policy, the NRC may disposition certain Severity Level IV violations and violations associated with green SDP findings as NCVs.
 - 1. NCVs should be discussed in the report details and the summary of findings sections of the report and noted in the inspection transmittal letter in accordance with the following general guidance:
 - (a) Inspection report details should briefly describe the requirement and how the requirement was violated.
 - (1) Even though the issue may warrant disposition as an NCV, the staff must still provide sufficient detail to substantiate the existence of a Severity Level IV violation or violation associated with a green SDP finding (see applicable guidance in Inspection Manual Chapter 0612).

- (2) Although the degree of detail necessary to support a violation is a function of the significance and the complexity of the noncompliance, the supporting detail for a given Severity Level IV violation or violation associated with a green SDP finding should be the same, whether it is dispositioned as an NOV or NCV.
 - (3) NCVs should be addressed in the inspection report transmittal letter (cover letter) after any cited violations. The discussion should simply note how many NCVs were identified, and include “appeal” process language. Cover letters should include a Nuclear Materials Events Database (NMED) number, if applicable.
 - (4) The details of specific NCVs should not normally be discussed in inspection report cover letters. However, there may be instances where a brief discussion of an NCV is warranted, such as cases where categorization at Severity Level III or association with a white issue was seriously considered and where it is important to emphasize the importance of corrective action.
 - (5) Cover letters should not be used as a substitute for an NOV. In particular, cover letters should not generally seek additional information about an NCV.
- c. The following discussion provides specific guidance for documenting NCVs:
1. **Power Reactor Licensees:**
 - (a) The NRC Enforcement Policy provides that most Severity Level IV violations and violations associated with green SDP findings involving a power reactor be dispositioned as NCVs unless they meet one of the exceptions that may warrant citation in an NOV.
 - (b) The inspection report should also include the licensee’s corrective action program file reference.
 - (1) In many cases, the licensee will not have yet developed the corrective actions at the time of the inspection report’s issuance.
 - (2) If the inspector is aware of the licensee’s corrective actions, he/she may choose to document them in the inspection report.
 - (3) Documentation of the licensee’s corrective actions is not required for enforcement purposes. An applicable conclusion should be included that the issue will not be cited, as follows:

“This Severity Level IV violation is being treated as a Non-Cited Violation, consistent with Section VI.A.1 of the NRC Enforcement Policy. This violation is in the licensee’s corrective action program as [Include file reference].”

or

“This violation is associated with an inspection finding that is characterized by the Significance Determination Process as having very low risk significance (i.e., green) and is being treated as a Non-Cited Violation, consistent with Section VI.A.1 of the NRC Enforcement Policy. This violation is in the licensee’s corrective action program as [Include file reference].”

or

“Although this violation is willful, it was brought to the NRC's attention by the licensee, it involved isolated acts of a low-level individual, and it was addressed by appropriate remedial action. Therefore, this violation is being treated as a Non-Cited Violation, consistent with Section VI.A.1 of the NRC Enforcement Policy. This violation is in the licensee’s corrective action program as [Include file reference].”

2. All Other Licensees:

- (a) Licensee-identified Severity Level IV violations that satisfy the criteria in the Enforcement Policy may be dispositioned as NCVs.
- (b) Documentation in inspection reports and inspection records should also briefly describe the corrective actions to provide a basis for a repetitive violation if the corrective actions are inadequate or not implemented.
- (c) NCVs documented in inspection reports should be cited in inspection reports as NCVs, while NCVs documented in inspection records should be cited as NCVs on NRC Form 591. In both cases, a conclusion should be included that the violation will not be cited, as follows (depending on whether or not the violation was willful):

“This non-repetitive, licensee-identified and corrected violation is being treated as a Non-Cited Violation, consistent with Section VI.A.8 of the NRC Enforcement Policy.”

or

“Although this violation is willful, it was brought to the NRC's attention by the licensee, it involved isolated acts of a low-level individual, and it was addressed by appropriate remedial action. Therefore, this non-repetitive, licensee-identified and corrected violation is being treated as a Non-Cited Violation, consistent with Section VI.A.8 of the NRC Enforcement Policy.”

2.13.3 Documenting Non-Escalated Enforcement Actions

- a. Severity Level IV violations and violations associated with green SDP findings that are cited in an NOV may be documented in an inspection report or inspection records and should be addressed throughout the documentation as “violations” versus “apparent violations,” (since an actual NOV is included).
- ☞ For materials licensees, Severity Level IV violations may also be dispositioned through the use of NRC Form 591.
1. The violations should be addressed in the report details and summary of findings, and conclusion sections of the inspection report.
 2. Inspection report details should briefly describe the requirement and how the requirement was violated.
 3. The staff must provide sufficient detail to substantiate the existence of a Severity Level IV violation or violation associated with a green SDP finding (see applicable guidance in Inspection Manual Chapter 0610). The degree of detail necessary to support a violation is a function of the significance and the complexity of the noncompliance.
 4. The cover letter transmitting the non-escalated NOV should be prepared in accordance with the guidance in this Manual and the appropriate cover letter template in Appendix B. The cover letter MUST address why an NOV is being issued in terms of the Enforcement Policy criteria they met.
- b. Deviations and nonconformances are generally issued as part of non-escalated enforcement actions and may be documented in inspection reports or inspection records.
1. The deviations or nonconformances should be addressed in the executive summary, report details, observations and findings, and conclusion sections of the inspection report.
 2. The cover letter transmitting a Notice of Deviation (NOD) should be prepared using the appropriate cover letter template in Appendix B with appropriate modifications to reflect the NOD as the enforcement action versus an NOV. NODs involving FSAR issues require the approval of the Director, OE.
 3. The cover letter transmitting a Notice of Nonconformance (NON) should also be prepared using the appropriate template in Appendix B.

2.13.4 Documenting Potential Escalated Enforcement Actions

- a. Issues being considered for potential escalated enforcement action should be documented in inspection reports (inspection records should not be used) and should refer to the potential noncompliances as "apparent violations" throughout the report and should not include any specific conclusions regarding the safety significance or severity level of the apparent violations or SDP characterizations.
 1. The discussion of an apparent violation in the inspection report: Should address the facts supporting the significance of the issue without making any specific conclusions about the "safety significance," e.g., in a particular case involving a procedure violation, it would be appropriate to include the following sentence in the inspection report, "Although the apparent violation of the failure to follow procedures did not result in an actual safety consequence, it could have (under the circumstances) resulted in an overexposure." However, for the same case, it would not be appropriate to say, "The apparent violation of the failure to follow procedures was not safety significant."
 - (a) The latter conclusion does not capture the full set of circumstances of the issue (i.e., that there was a potential safety consequence); and
 - (b) Although this sentence does not specifically include a severity level categorization, the conclusion could be construed as not meeting the threshold for escalated action.
- b. The safety significance and severity level or SDP characterization of issues being considered for escalated action is not normally made until after a SERP or enforcement panel, a predecisional enforcement conference or regulatory conference, and SERP or enforcement caucus.
 1. A premature conclusion of the safety significance and severity level or SDP characterization for an apparent violation in the inspection report has the potential for confusion if views change based on a subsequent review of the facts.
 2. Apparent violations should be addressed in the executive summary, report details, observations and findings, and conclusion sections of the inspection report.

2.13.5 Documenting Violations That Potentially Involve Willfulness

- a. The discussion in the inspection report should address the circumstances surrounding the apparent violation without making a conclusion about the intent of the violator.
 1. A premature conclusion as to whether an apparent violation is deliberate, willful, or was due to careless disregard, has the potential for confusion if views change based on a subsequent review of the facts.

2. Conclusions about the willfulness of an apparent violation represent agency decisions that are normally not made until after OI has performed an investigation and a predecisional enforcement conference has been held, therefore:
- (a) It is appropriate to include the following sentence in an inspection report (presuming the facts are clear):

"Despite informing the inspector that he was aware of the need to use an alarming dosimeter when performing radiography, the radiographer failed to activate his alarming dosimeter."

- (b) It is **not** appropriate to include the following sentence:

"The radiographer deliberately failed to activate his alarming dosimeter."

✓ Inspection reports that include apparent violations that may involve willfulness are to be coordinated with OI. OE should be notified prior to the issuance of the report.

- c. If during an inspection indications of willfulness are identified, regional management and OI should be promptly notified.

2.13.6 Documenting Violations That Warrant Mitigation Enforcement Discretion

- a. For Severity Level I, II, III, or IV violations, the NRC may choose to exercise discretion and refrain from issuing an NOV or civil penalty in accordance with the Enforcement Policy.
- b. When discretion is being considered for a violation and the agency has not yet reached a formal enforcement decision, the inspection report narrative should refer to the violation as an "apparent violation."
- c. When the agency concludes that discretion should be exercised for a violation that meets the criteria of the Enforcement Policy, these issues should:

✎ Violations that warrant enforcement discretion, should not be documented in inspection reports as NCVs. The "NCV" term is reserved for violations that meet the criteria for discretion in accordance with the Enforcement Policy. These violations should be addressed in the summary of findings, report details, and conclusion sections of the inspection report.

1. Be documented in inspection reports (inspection records should not be used) as violations.
2. The cover letter to the licensee should include a reference to the applicable section of the Policy, the severity level of the violations, and a clear basis for exercising this discretion.

2.13.7 Documenting Multiple Examples of a Violation

- a. Multiple examples of the same violation during the period covered by an inspection should be included in one citation or NCV. However, inspector judgement must be used to evaluate each example on its own merits to conclude the appropriate manner for dispositioning the issue.
- b. When determining whether multiple examples should be cited in a single violation, the following should be considered:
 1. Whether different root causes are involved;
 2. Whether different corrective actions are necessary to prevent recurrence for the different examples; and
 3. Whether the facts of the case warrant separate treatment for factors such as willfulness, actual consequences, or statute of limitations, etc.
- c. If the corrective action is similar for multiple examples of violations of the same requirement(s) they:
 1. Should generally be cited in a single citation; and
 2. An unresolved item from a previous inspection report period that is subsequently resolved to be a violation may be included with examples in a current report period if, in the judgement of the inspector and his/her management, the similarities of the violations reasonably constitute "examples" of the same underlying violation.
- d. Even though there may be multiple examples of a violation, each example must be able to stand alone as a separate Severity Level IV violation. As discussed in the following section of this chapter, multiple minor violations must not be aggregated to justify a Severity Level IV violation.
 1. Generally, the "contrary to" paragraph should state the violation and then state: "...as evidenced by the following examples:" followed by the examples delineated as 1, 2, 3, etc.
 2. When the examples of a particular violation are numerous, the NOV should cite representative examples of the highest safety/regulatory significance in order to convey the scope of the violation and provide a basis for assessing the effectiveness of the licensee's corrective actions.
 3. Normally three to five examples should be adequate.

2.13.8 Documenting Related Violations

- a. The staff should not view the significance of a group of related programmatic violations as being greater than the individual violations (i.e., aggregation). While these issues may be considered in developing the appropriate enforcement action and agency response (increased inspections, management meetings, etc.), they **should not** be used to increase significance.
- b. Violations should not be aggregated for purposes of increasing the significance.
 1. In some cases, it may be appropriate to group violations as examples of a **problem**.

☞ Although it may be appropriate to group violations as examples of a problem, violations should not be “**Aggregated**” into a violation/problem of a higher severity level, e.g., assessing several NCVs that are loosely related as a Severity Level IV violation.

 - (a) The reason for grouping violations into a problem is to appropriately characterize the significance of the event or incident.
 - (b) Grouping the violations informs the licensee and the public that NRC is aware that the violations are closely related and are not separate regulatory breakdowns.
 - (c) The staff will need to use judgement in determining whether grouping the violations will convey the appropriate message.
 - (d) When dispositioning violations as a problem, the staff should only group violations that are closely related, such as having a cause and affect relationship or directly related to the same event (e.g., failure to perform adequate testing that results in a piece of inoperable equipment, loss of material and failure to report the loss).
 - (e) The staff can group violations that have the same or different severity levels. When doing so, the problem should be assigned the severity level of the most significant violation.
 - (f) The staff should not assign a severity level to the problem that is higher than the most significant violation (i.e., should not aggregate lower severity level violations into a problem assigned a higher severity level).
 2. The cover letter should discuss the significance of each individual violation and the NOV should include all Supplements applicable to the violations that are grouped as a problem.
 3. When determining the civil penalty for the problem, the staff should follow the civil penalty assessment process for each escalated violation and should not assess a civil penalty higher than would be assessed for the most significant violation included as an example of the problem.

- c. The following guidance should be used to determine the significance of a problem and whether a civil penalty is warranted:
1. For Severity Level II violations, identification credit is always considered; however, identification credit is only considered for willful Severity Level III violations or Severity Level III violations committed by a licensee who has had a violation (regardless of the activity area) within the past two years or two inspections.
 2. Regardless of other circumstances, (e.g., identification, past enforcement history), the licensee's corrective action should always be evaluated as part of the civil penalty assessment process. When the licensee's corrective action is not prompt and comprehensive, at least a base civil penalty will always be assessed.
 3. The following examples illustrate this guidance:
 - (a) Example 1: This problem is composed of a two, non-willful violations, i.e., a Severity Level II violation and a Severity Level III violation, involving a licensee-identified issue where prompt and comprehensive corrective action was taken. The licensee has no history of previous violations within the past two years or two inspections.

The significance of this problem would result in a Notice of Violation involving a Severity Level II problem; however, it would not be assessed a civil penalty because:

- (1) The severity level of the most significant violation was a Severity Level II;
 - (2) The Severity Level II violation was licensee-identified; and
 - (3) The licensee took prompt and comprehensive corrective actions to address the problem.
- (b) Example 2: This problem is composed of a two, non-willful violations, i.e., a Severity Level II violation and a Severity Level III violation, involving an NRC-identified issue where prompt and comprehensive corrective action was taken. The licensee has no history of previous violations within the past two years or two inspections.

In this example, the significance of this problem would result in a Notice of Violation involving a Severity Level II problem with a base civil penalty because:

- (1) The severity level of the most significant violation was a Severity Level II;
- (2) The Severity Level II violation was NRC-identified; and
- (3) The licensee took prompt and comprehensive corrective actions to address the problem.

- (c) Example 3: This problem is composed of a two, non-willful violations, i.e., a Severity Level II violation and a Severity Level III violation, involving an NRC-identified issue where prompt and comprehensive corrective action was NOT taken. The licensee has no history of previous violations within the past two years or two inspections.

In this example, the significance of this problem would result in a Notice of Violation involving a Severity Level II problem with 2 x the base civil penalty because:

- (1) The severity level of the most significant violation was a Severity Level II;
- (2) The Severity Level II violation was NRC-identified; and
- (3) The licensee had failed to take prompt and comprehensive corrective actions to address the problem.

- (d) Example 4: This problem is composed of two, non-willful Severity Level III violations. The first Severity Level III violation was NRC-identified and, in addition, the licensee had not taken prompt and comprehensive corrective actions to address the problem. The second Severity Level III violation was licensee-identified and, in addition, the licensee had taken prompt comprehensive corrective actions to address the problem. (Although irrelevant in this instance, the licensee has no history or previous violations within the past two years or two inspections.)

In this example, the significance of this problem would result in a Notice of Violation involving a Severity Level III problem with 2 x the base civil penalty because:

- (1) The severity level of the most significant violation was a Severity Level III;
- (2) Although one of the violations was licensee-identified, the other violation was NRC-identified; and
- (3) Although the licensee took prompt and comprehensive corrective actions for the violation it identified, it did NOT take prompt and comprehensive corrective actions for the violation that was NRC-identified.

2.13.9 Documenting Examples of Violations Previously Cited

- a. Cases frequently arise in which examples of violations that have been previously cited as NOVs or dispositioned as NCVs, are identified.
- b. If corrective actions from the earlier issues have not been completed at the time that the current examples of the same violation(s) become known to the inspection and no broad additional corrective actions are warranted, the current examples do not need to be cited when the current examples, had they been known at the time of the original inspection, would not have been included in the initial citation to establish the scope and depth of the needed corrective actions.

- c. Any inspection report description of the additional examples should include text similar to the following:

“This violation constitutes an additional example of violation XX-YYY/YY-ZZ-01 and is not being cited individually. No additional response to violation XX-YYY/YY-ZZ-01 is required. Further corrective actions for this additional example are expected to be taken in conjunction with corrective actions for the previously cited violation.”

2.14 Proper Handling of Predecisional Enforcement Information

- a. The NRC staff should discuss the identification of apparent violations with licensees or release inspection reports that document apparent violations to licensees to ensure that corrective actions are initiated to protect the public health and safety and to obtain compliance. However, the NRC staff may not discuss or release predecisional enforcement information to licensees or the public. Predecisional enforcement information includes, but is not limited to:
- ✓ Release of information that may impact an open OI matter shall be coordinated with OI in advance of its release.
1. The potential severity level of a violation;
 2. The proposed amount of a civil penalty; and
 3. The nature or context of an order.
- b. The release of predecisional information may unnecessarily interfere with the enforcement process and may inappropriately affect licensees or their employees.
1. The premature release of information, other than premature release by clearly inadvertent actions, is a serious matter and may be considered for referral to the Office of the Inspector General (OIG).
 2. If predecisional information needs to be released to, e.g., achieve a settlement of an enforcement action or to reach agreement on a confirmatory order, the Director, OE, must be consulted prior to release of such information.
- c. Predecisional documents associated with a proposed enforcement action should be clearly marked, "Official Use Only - Predecisional Enforcement Information" until the final enforcement action is issued. Additional information regarding the release of predecisional information is included in Management Directive 3.4, "Release of Information to the Public" (Management Directive 3.4 is currently under revision).