DRAFT SUPPORTING STATEMENT FOR
NOTICE OF ENFORCEMENT DISCRETION (NOEDs) FOR
OPERATING POWER REACTORS AND
GASEOUS DIFFUSION PLANTS (GDP)
(NRC ENFORCEMENT POLICY)
(3150-0136)

Renewal with Burden Revision

DESCRIPTION OF THE INFORMATION COLLECTION

The Enforcement Policy of the Nuclear Regulatory Commission (NRC) includes the circumstances in which the NRC may grant a notice of enforcement discretion (NOED). On occasion, circumstances arise when a power plant licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or any other license condition would involve an unnecessary plant shutdown. Similarly, for a gaseous diffusion plant (GDP), circumstances may arise where compliance with a Technical Safety Requirement (TSR) or other condition would unnecessarily call for a total plant shutdown, or, compliance would unnecessarily place the plant in a condition where safety, safeguards or security features were degraded or inoperable.

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

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

In addition, NRC's Enforcement Policy includes a provision allowing licensees to voluntarily adopt fire protection requirements contained in the National Fire Protection Association Standard 805, "Performance Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition" (NFPA 805). Licensees who wish to implement the risk-informed process in NFPA-805 must submit a letter of intent to the NRC and submit a letter of retraction if they change their minds about implementing NFPA-805.

A. JUSTIFICATION

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

The Commission believes that the NRC staff needs the authority to quickly exercise discretion in this area in order to avoid unnecessary plant shutdowns, to minimize both operational and shutdown risk, or to avoid unnecessary delays in plant startup where the course of action involves minimal or no safety impact on the public health and safety. Exercise of enforcement discretion may be appropriate only where the exercise of discretion is temporary and nonrecurring. The NRC might approve a NOED where a license or certificate amendment is not

appropriate for the expected noncompliance. It may also be appropriate to approve a NOED for the brief period of time it requires for the NRC staff to process an exigent Technical Specification amendment under the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.91(a)(6), or to process an amendment to change a TSR or certificate condition under the provisions of 10 CFR Part 76.

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

The impact of this information collection on each licensee or certificate holder is inconsequential in comparison with the alternative: follow license or certificate conditions, cease power operations, and either shut down the plant; perform testing, inspection, or system realignment that is inappropriate for the specific plant conditions; or delay plant startup. Requesting that the NRC staff exercise enforcement discretion is strictly a voluntary option for all licensees and certificate holders.

2. Agency Use of Information

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

For an operating nuclear power plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant shutdowns. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by avoiding testing, inspection or system realignment which is inappropriate for the particular plant condition. Exercising enforcement discretion for plants attempting to start up is less likely than exercising it for an operating plant, as delaying startup does not usually leave the plant in a condition in which it could experience undesirable conditions. In such cases, the NRC would expect that discretion would be exercised with respect to equipment or systems only when it has concluded that: (1) the equipment or system does not perform a safety function in the mode in which operation is to occur; or (2) remaining in the current mode increases the likelihood of an unnecessary plant condition; or (3) the TS or license condition requires a test, inspection or system realignment that is inappropriate for the particular plant condition.

For a gaseous diffusion plant, this exercise of enforcement discretion is expected to be extremely rare, but is intended to minimize the potential safety, safeguards, or security consequences of unnecessary plant conditions with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. In such cases, the NRC would expect that discretion would be exercised with respect to

equipment or systems when it has concluded that: (1) the equipment or system does not perform a safety function in the mode in which operation is to occur; or (2) the safety function performed by the equipment or system is of only marginal safety benefit, and remaining in the current mode increases the likelihood of an unnecessary plant condition; or (3) the TSR or certificate condition requires a test, inspection or system realignment that is inappropriate for the particular plant condition.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. The NRC encourages respondents to use information technology when it would be beneficial to them. NRC issued a regulation on October 10, 2003 (68 FR 58791), consistent with the Government Paperwork Elimination Act, which allows its licensees, vendors, applicants, and members of the public the option to make submissions electronically via CD-ROM, e-mail, special Web-based interface, or other means. However, because of the types of information and the infrequency of submission, the reports do not readily lend themselves to the use of technological collection techniques for submission.

4. Effort to Identify Duplication and Use Similar Information

This information is only necessary when a licensee or certificate holder seeks the issuance of an NOED. There is no other time the relevant information is required to be submitted, and there is no source for the information other than licensees or certificate holders. NRC has in place an on-going program to examine all information collections with the goal of eliminating all duplication and/or unnecessary information collections.

5. Effort to Reduce Small Business Burden

Not applicable.

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

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

7. Circumstances Which Justify Variation From OMB Guidelines

This action does not vary from OMB guidelines.

8. Consultation Outside the NRC

The NRC has discussed with stakeholders and Nuclear Energy Institute the process which was issued in NRC Regulatory Issue Summary 2005-01, "Changes to Notice of Enforcement Discretion (NOED) Process and Staff Guidance," dated February 7, 2005.

The NRC previously consulted with three different stakeholders (licensees) in 2005, which represent a total of 26 plants, regarding the estimated burden relating to the information collections contained in this document. The NRC and the stakeholders were in agreement at that time that the licensee effort to process an NOED request is 150 staff hours per request. There have been no changes to the NOED process that contradict the previous estimate.

Opportunity to comment on the information collection was published in the Federal Register.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

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

11. Justification for Sensitive Questions

Not applicable.

12. Estimate of Industry Burden and Burden Hour Cost

Since requesting a NOED is voluntary, only an estimate can be made of the number of licensees and certificate holders choosing to implement its requirements. Staff estimates that 9 power plant licensees and 1 GDP certificate holder will request 1 NOED annually. The burden estimate per request is 150 hours; the annual burden is 1,500 hours (10 licensees/certificate holders x 150 hours).

In addition, the NRC expects to receive four letters of intent to implement NFPA-805 annually. The burden estimate per request is 40 hours; the annual burden is 160 hours (4 letters of intent x 40 hours per request = 160). The NRC does not expect to receive any letters of retraction.

The total annual reporting burden is 1,660 hours (1,500 + 160 = 1,660).

As a result of requesting a NOED, there is an implied recordkeeping burden. This recordkeeping burden is estimated at 164.5 hours (16.45 hours per recordkeeper) for maintaining a copy for the licensees' records. It is also anticipated that most licensees will maintain a copy for their records.

The total annual burden is 1,824.5 hours, rounded up to 1,825 hours. The total cost at $258 an hour is $470,850 (1,825 hours x $258/hr).

Total Burden/Cost:	1,825 hours (1,660 hrs reporting + approximately 165 hrs recordkeeping)/$470,850
Total Respondents:	14 (10 licensees requesting NOEDs and 4 licensees submitting NFPA-805 letters of intent)
Total Responses:	24 (14 responses and 10 recordkeepers)

13. Estimate of Other Additional Costs

The recordkeeping burden is roughly proportional to the quantity of records required to be maintained. Based on the number of pages maintained for a typical clearance, the record's storage cost has been determined to be equal to .0004 times the recordkeeping burden cost. Therefore, the storage cost for this clearance is estimated to be $17.03 (approximately 165 hours X $258/hour X .0004).

14. Estimated Annual Cost to the Federal Government

The estimated annual burden to the government for reviewing licensee and certificate holder requests for enforcement discretion is 40 hours per request. Approximately 9 licensees and one certificate holder are expected to request one enforcement discretion each year. Therefore, the total burden is estimated at 400 hours (10 licensees/certificate holders x 40 hours). The total cost at $258 an hour is $103,200.

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

15. Reasons for Change in Burden or Cost

The overall estimated burden decreased from 1,991 hours to 1,825 hours, a 166 hour decrease. This is a decrease from 1,810 to 1,660 reporting hours (150 hour decrease) and a decrease from 181 to 165 recordkeeping hours (16 hour decrease). This decrease is due to a decrease in the estimated number of NOEDs from 11 annually to 10 annually.

The decrease in estimated number of annual NOEDs is based on a review of past NOED data. NOED data for nuclear power plant licensees since 2000 was reviewed and it was determined that since 2000, there have been 128 NOEDs. Of these 128, 44 were for one specific licensee and concerned a plant operator licensing issue and are considered extraordinary. Removing these 44, the total NOEDs over the last 8 years is 74 which results in an average of 9.25 NOEDs per year. There have been no NOEDs issued since 2000 for Gaseous diffusion plant certificate holders. As such, a conservative estimate of 10 NOEDs per year, for the next three years was used.

In addition, the cost for professional effort has increased from $157 to $258 per hour.

16. Publication for Statistical Use

None.

17. Reason for Not Displaying the Expiration Date

The requirement is contained in the NRC Enforcement Policy. Revising the Enforcement Policy merely to update the expiration date unnecessarily expends scarce agency resources.

18. Exceptions to the Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.