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STARS-08017

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Rulemaking, Directives and Editing Branch  
Mail Stop T6-D59  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

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RULES & REGULATORY DIVISION

**STRATEGIC TEAMING AND RESOURCE SHARING (STARS)  
Comments on the Draft NRC Enforcement Policy  
(73 FR 53286)**

Dear Mr. Lesar,

The Strategic Teaming and Resource Sharing (STARS)<sup>1</sup> alliance would like to take advantage of the opportunity to comment on the Draft NRC Enforcement Policy. Comments are provided in the enclosure to this letter.

The STARS alliance appreciates this opportunity to provide comments. If there are any questions regarding these comments, please contact me at 573-676-4775, or tmoser@ameren.com, or Duane Kanitz at 623 393-5427, or duane.kanitz@aps.com.

Sincerely,

T. Moser, Chairman  
STARS Integrated Regulatory Affairs Group

Enclosure: STARS Comments on Draft NRC Enforcement Policy

<sup>1</sup> STARS consists of thirteen plants at seven stations operated by Luminant Power, AmerenUE, Wolf Creek Nuclear Operating Corporation, Pacific Gas and Electric Company, STP Nuclear Operating Company, Arizona Public Service Company, and Southern California Edison.

SUNSI Review Complete  
Template = ADM-013

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Add = D. Turkey (drs)

The STARS alliance respectfully submits the following comments:

**1) Reference pages 7 and 8, section 2.2.1(c), lines 4 through 8**

The sentence currently reads, "These types of violations include failures such as: failures to provide complete and accurate information, failures to receive prior NRC approval for changes in licensed activities, failures to notify NRC of changes in licensed activities, failures to perform 10 CFR 50.59 and similar analyses, reporting failures, etc." The term "reporting failures" is confusing. Recommend the term "reporting failures" be changed to "failures to comply with the reporting requirements" such that the sentence would read "These types of violations include failures such as: failures to provide complete and accurate information, failures to receive prior NRC approval for changes in licensed activities, failures to notify NRC of changes in licensed activities, failures to perform 10 CFR 50.59 and similar analyses, failures to comply with the reporting requirements, etc."

**2) Reference page 8, section 2.2.1(d), lines 6 and 8**

The sentence currently reads, "The term "willfulness" as used in this policy refers to conduct involving either a careless disregard violation of requirements or deliberate violation of requirements." The term "careless disregard violation of requirements" is too subjective. Recommend that violations involving willfulness be limited to deliberate violations.

**3) Reference page 10, section 2.2.3.1(c), lines 2 through 5**

The sentence currently reads, "In determining the severity level assigned to such violations, the NRC will consider information in this policy and its supplements, as well as SDP-related information available for issues that can be assessed by the SDP (i.e., the color that would have been assigned to underlying issues)." This sentence discusses using the Significance Determination Process (SDP) in a subsection titled, "Exceptions to the Use of the SDP." This discussion is confusing. Recommend the NRC Enforcement Policy be very clear on how regulations are enforced - when traditional enforcement alone is used and when the SDP is used. The NRC in some cases has not consistently applied the enforcement policy. An example is in the application of the enforcement policy toward overtime violations. There is currently an open question being discussed in the monthly Reactor Oversight Process meeting between the industry and the NRC about how the NRC intends to enforce the new part 26 rule because of the past inconsistent application of the enforcement policy toward overtime violations. In the specific case of the enforcing the new part 26 rule, the STARS alliance recommends the use of traditional enforcement because attempting to determine a change in human error probability based on exceeding overtime limitations has too much uncertainty to produce a usable indicator of safety significance.

**4) Reference page 10, section 2.3.2(a), lines 4 through 6**

The sentence currently reads, "Licensees are not required to provide written responses to NCVs; however, licensees may provide a written response if they disagree with the NRC's description of the NCV and/or dispute the validity of the NCV." This sentence provides examples of when a written response to a non-cited violation (NCV) is appropriate. Recommend the following be added to the sentence: "or disagree with the cross cutting aspects that were assigned to the NCV."

**5) Reference page 11, section 2.3.2(a)3, lines 1 and 3**

This sentence is confusing and implies that violations identified by the NRC can not be dispositioned as a NCV. Recommend adding a sentence clarifying cases where a non-repetitive NRC identified violation can be dispositioned as an NCV.

**6) Reference page 12, paragraph 4 in section 2.3.2(c)4, line 2 through 6**

The sentence currently reads, "The NRC may exercise this discretion when a licensee was aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so; however, the NRC would take this action only when it believes a strong regulatory message is warranted." Recommend that the word "reasonable" be added such the sentence would read; "The NRC may exercise this discretion when a licensee was aware of a violation, or if the licensee had a reasonable opportunity to identify and correct the violation but failed to do so; however, the NRC would take this action only when it believes a strong regulatory message is warranted." Occasionally the concept of "opportunity to identify" is applied too literally. Rigorous evaluation of operating experience should be expected; however, conditions that would have required an exhaustive extent of condition should not be characterized as an "opportunity to identify." There needs to be some reasonable boundaries on what is considered an "opportunity to identify."

**7) Reference page 13, paragraph 6 in section 2.3.2(c)4, lines 7 through 10**

The sentence currently reads, "Notwithstanding the normal civil penalty assessment process, in cases where a licensee has lost required control of its regulated radioactive material for any period of time, the NRC normally should impose at least a base civil penalty." Recommend the word "physical" be added such that the sentence would read, "Notwithstanding the normal civil penalty assessment process, in cases where a licensee has lost required physical control of its regulated radioactive material for any period of time, the NRC normally should impose at least a base civil penalty." A minor administrative error on a special nuclear materials track sheet is considered a "loss of required control." This type of error does not warrant "at least a base civil penalty."

**8) Reference page 13, paragraph 1 in section 2.3.2(d), lines 7 through 9**

The sentence currently reads, "Orders are made immediately effective, without prior opportunity for a hearing, whenever the NRC determines that the public health, safety, interest, or common defense and security so requires." This should be less subjective. Recommend replacing the words "so requires" with "are at risk" such that the sentence would read, "Orders are made immediately effective, without prior opportunity for a hearing, whenever the NRC determines that the public health, safety, interest, or common defense and security are at risk."

**9) Reference page 17, section 3.2, lines 1 through 11**

The sentence currently reads as follows:

"The NRC may exercise discretion to refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, if the violation is documented in an inspection report (or inspection records for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

- a. it was licensee-identified as a result of its voluntary initiative;
- b. it was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures caused by similar root causes); and
- c. it was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities."

The term "voluntary initiative" in criteria (a) is a "quality (QA) activity." Recommend adding "routinely scheduled" to the term "quality assurance (QA) activities" and deleting the term "routine licensee" such that criterion (c) would read "it was not likely to be identified (after the violation occurred) by efforts such as normal surveillances or routinely scheduled quality assurance (QA) activities."

**10) Reference pages 20 through 23, section 3.9 (entire section)**

The entire section titled, "Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)" does not belong in the NRC Enforcement Policy because the language is too prescriptive for a policy. The language used in this section belongs in guidance, such as an Enforcement Guidance Memorandum or an equivalent document. Also, this section contains verbiage that needs to be updated. As an example, section 3.9 (b) reads as follows".

"For these noncompliances, the NRC is providing enforcement discretion for the implementation of corrective actions until the licensee has transitioned to 10 CFR 50.48(c) provided that the noncompliances meet all of the following criteria:

1. The licensee has entered the noncompliance into their corrective action program and implemented appropriate compensatory measures;
2. The noncompliance is not associated with a finding that the Reactor Oversight Process Significance Determination Process would evaluate as Red, or it would not be categorized at Severity Level I;
3. It was not willful; and
4. The licensee submits a letter of intent by December 31, 2005, stating its intent to transition to 10 CFR 50.48(c)."

A licensee can no longer comply with criterion 4 as written because December 31, 2005 is a historical date.

**11) Reference page 32, section 6.9(b)2, lines 1 through 3**

The acronym "ITAAC" is used with out first being defined. Recommend defining the acronym the first time it is used in the NRC Enforcement Policy.

**12) Reference page 32, section 6.9(c)4, lines 1 through 4**

The sentence currently reads, "Inaccurate or incomplete performance indicator (PI) data submitted to the NRC by a Part 50 licensee that would have caused a PI to change from green to either yellow or red; white to either yellow or red; or yellow to red – regardless of when (i.e., what quarter) the inaccurate or incomplete data submittal occurred." The term "regardless of when (i.e., what quarter)" removes the "statute of limitations." For PI data, accountability should be limited to inhibiting the NRC's ability to assess current licensee performance. This "statue of limitations" may not be applicable to inaccurate or incomplete information as it applies to licensing bases documents but it is certainly appropriate for Reactor Oversight Process issues. Recommend removing the part of the sentence that reads "regardless of when (i.e., what quarter) the inaccurate or incomplete data submittal occurred."

**13) Reference page 32, section 6.9(d)3, lines 1 through 3**

The sentence currently reads, "Inaccurate or incomplete performance indicator (PI) data submitted to the NRC by a Part 50 licensee that would have caused a PI to change from green to white – regardless of when (i.e., what quarter) the inaccurate or incomplete

data submittal occurred." The term "regardless of when (i.e., what quarter)" removes the "statute of limitations." For PI data, accountability should be limited to inhibiting the NRC's ability to assess current licensee performance. This "statue of limitations" may not be applicable to inaccurate or incomplete information as it applies to licensing bases documents but it is certainly appropriate for Reactor Oversight Process issues. Recommend removing the part of the sentence that reads "regardless of when (i.e., what quarter) the inaccurate or incomplete data submittal occurred."

**14) Reference page 34, section 6.11(b)1, line 1 and 2**

The sentence currently reads, "A substantial potential for an act of radiological sabotage of a significant quantity of radioactive material." Severity Level II Violations are very significant and should be reserved for actual events not potential events. Recommend removing 6.11(b)1 from the examples of Severity Level II Violations.

**15) Reference pages 34 and 35, sections 6.11(b)6, 6.11(b)7, 6.11(c)3, 6.11(c)6, and 6.11(c)8**

The draft NRC Enforcement Policy added guidance in section 2.2.1 on security events and clarified that issues that would fall under the enforcement policy would be those that had actual consequence due to a significant event or significant exposure. However, the guidance in section 6.11 does not reflect this in many cases. Recommend revising sections 6.11(b)6, 6.11(b)7, 6.11(c)3, 6.11(c)6 and, 6.11(c)8 to read as follows:

(Section 6.11(b)6)

6. Actual damage to components of a target set, i.e., safety-related components or vital equipment as a result of a significant security event.

(Section 6.11(b)7)

7. A failure, degradation or other deficiency of the protected area or vital area intrusion detection system (e.g., the security computer, CAS/SAS ability to monitor IDS and/or cameras), without the implementation of appropriate compensatory measures resulting in significant actual consequences.

(Section 6.11(c)3)

3. A failure to perform an appropriate evaluation of a background investigation, psychological assessment, background re-investigation or psychological re-evaluation that resulted in unescorted access or retaining unescorted access resulting in significant actual consequences.

(Section 6.11(c)6)

6 A significant failure to protect or control classified or safeguards information of licensee's protective strategies, contingency plans or documents that directly reflect the implementation of strategies.

(Section 6.11(c)8)

8 A significant failure of contraband detection equipment without the implementation of appropriate compensatory measures.

**16) Reference page 34, section 6.11(c)4, lines 1 through 4**

The sentence currently reads, "A failure to conduct a search or conducting an inadequate search at any protected area access control point that resulted in the introduction of firearms, explosives, or incendiary devices or reasonable facsimiles thereof that could assist in committing radiological sabotage or theft or diversion of strategic SNM." An item that appears to be a firearm, explosive, or incendiary device used in drills that did not result in a significant security event should not be included in this example. Recommend removing the phrase "or reasonable facsimiles thereof" such that the sentence would read, "A failure to conduct a search or conducting an inadequate search at any protected area access control point that resulted in the introduction of firearms, explosives, or incendiary devices that could assist in committing radiological sabotage or theft or diversion of strategic SNM."

**17) Reference page 35, section 6.11(d)1, line 1**

The sentence currently reads, "A potential for an act of radiological sabotage of radioactive material." A "potential" always exists for this type of sabotage that is why we have programs such as behavioral observation. Recommend removing 6.11(d)1 from the examples of Severity Level IV Violations.

**18) Reference page 41, section 8.0, Table A, line 1 and 2**

The base civil penalty should be changed from \$130,000 to \$140,000 to be consistent with the change published in the Federal Register (73 FR 54671).