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PREFACE

The U.S. Nuclear Regulatory Commission (NRC) Enforcement Policy sets forth the general principles governing the NRC's enforcement program and the Commission's expectations regarding the process to be used by the NRC to assess and disposition violations of NRC requirements. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy as appropriate under the circumstances of a particular case. The Policy also describes how organizations and individuals subject to NRC enforcement actions can provide input to the process. A Glossary of Terms is provided which defines specific terms or words as they are used in the context of this Policy. Specific processes and guidance for implementing this Policy are contained in the NRC Enforcement Manual. The guidance provided in the Enforcement Manual has been written to be consistent with this Enforcement Policy. The Enforcement Manual can be found on the NRC's public Web site, www.nrc.gov (Select **Electronic Reading Room**, then **Basic References**, then **Enforcement Documents**, then **Enforcement Guidance**, then **Enforcement Manual**).

A compilation of the statutes and materials pertaining to current nuclear regulatory legislation can be found on the NRC Home Page at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0980/>.

Changes to the NRC Enforcement Policy since it was first published with links to a summary of each change and the Federal Register notice (FRN) for each change is maintained at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/history/>

1.1 Purpose of the NRC Enforcement Policy

The NRC Enforcement Policy supports the NRC's mission to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. Compliance with NRC requirements, including regulations, technical specifications, license conditions, and orders, provides confidence to the NRC and the public that safety and security are being maintained. Consistent with this objective, the enforcement policy endeavors to:

- a. Deter noncompliance by emphasizing the importance of compliance with NRC requirements; and
- b. Encourage prompt identification and prompt comprehensive correction of violations of NRC requirements.

1.2 Applicability of the Enforcement Policy

The enforcement policy applies to all NRC licensees and applicants, to various categories of non-licensees, and to individual employees of licensed and non-licensed entities involved in NRC-regulated activities. These include, but are not limited to:

- a. Organizations and individuals holding NRC licenses;
- b. License applicants;
- c. Contractors and subcontractors to NRC licensees;
- d. Holders of and applicants for various NRC approvals, including, but not limited to:
 - 1. NRC certificates of compliance;
 - 2. Early site permits;
 - 3. Standard design certificates;
 - 4. Quality assurance program approvals;
 - 5. Certifications;
 - 6. Limited work authorizations;
 - 7. Construction Authorizations; and
 - 8. Other permits and forms of NRC approval.
- e. Vendors supplying safety related components to NRC licensees; and

- f. Employees of any of the above.

Not all NRC requirements apply to all of the categories listed above, however, the enforcement policy will be used, as appropriate, to address violations of NRC requirements.

1.3 Statutory Authority

The NRC derives its principal authority to license and regulate the civilian use of nuclear materials from two statutes: 1) the [Atomic Energy Act \(AEA\) of 1954](#), as amended, which provides broad authority to license and regulate the civilian use of nuclear materials, and 2) the [Energy Reorganization Act \(ERA\) of 1974](#), as amended, which established the agency and its major offices. The [Administrative Dispute Resolution Act of 1996](#) (ADRA) 5 U.S.C. §§ 571-584, provides the statutory framework for the Federal Government to utilize alternative dispute resolution.

1.4 Regulatory Framework

The NRC's enforcement program is governed by its regulations. Subpart B of Part 2 of Title 10 of the Code of Federal Regulations (10 CFR Part 2), describes the formal procedures the NRC uses to implement its enforcement authority.

1.5 Adequate Protection Standard

Adequate protection of the public health and safety and assurance of the common defense and security and protection of the environment is the fundamental regulatory objective. Compliance with NRC requirements plays an important role in giving the NRC confidence that safety is being maintained. While adequate protection is presumptively assured by compliance with NRC requirements, circumstances may arise where new information reveals that an unforeseen hazard exists or that there is a substantially greater potential for a known hazard to occur. In such situations, the NRC has the statutory authority to require licensee action above and beyond existing regulations to maintain the level of protection necessary to avoid undue risk to public health and safety.

The NRC also has the authority to exercise discretion to permit continued operations --despite the existence of a noncompliance -- where the noncompliance is not significant from a risk perspective and does not, in the particular circumstances, pose an undue risk to public health and safety. When non-compliance with NRC requirements occurs, the NRC must evaluate the degree of risk posed by that non-compliance to determine whether immediate action is required. If the NRC determines that the non-compliance itself is of such safety significance that adequate protection is no longer provided, or that the non-compliance was caused by a failure of licensee controls so significant that it calls into question the licensee's ability to ensure adequate protection, the NRC may demand immediate action, up to and including a shutdown or cessation of licensed activities. Based on the NRC's evaluation of noncompliance, the appropriate action could include refraining from taking any action, taking specific enforcement action, issuing orders, or providing input to other regulatory actions or assessments, such as increased oversight (e.g., increased inspection). Since some requirements are more important to safety than others, the NRC endeavors to use a risk-informed approach when applying NRC resources to the oversight of licensed activities, including enforcement activities.

1.6 Responsibilities

The Executive Director for Operations (EDO) and the principal enforcement officers of the NRC, the Deputy Executive Director for Reactor and Preparedness Programs (DEDR) and the Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT), have been delegated the authority by the EDO to approve or issue all escalated enforcement actions.¹ The DEDMRT is responsible to the EDO for NRC enforcement programs. The Director, OE, with some limitations, is delegated the authority by the DEDO to approve, sign, and issue all enforcement actions and to exercise oversight of and to implement the NRC enforcement program.

Subject to the oversight and direction of OE, and with the approval of the DEDMRT, where necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. Subject to the same oversight as the regional offices, the Directors of the Office of Nuclear Reactor Regulation (NRR), the Office of Nuclear Material Safety and Safeguards (NMSS), the Office of Federal and State, Materials, and Environmental Management Programs (FSME), the Office of New Reactors (NRO), and the Office of Nuclear Security and Incident Response (NSIR) may also approve, sign, and issue certain enforcement actions as delegated by the Director, OE. The Directors of NRR, NMSS, FSME, NRO and NSIR have been delegated authority by the Director, OE, to issue orders not related to specific violations of NRC requirements. The Chief Financial Officer has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees. (See Enforcement Manual, Chapter 1, Responsibilities, for discussion on delegation of enforcement authority.)

2.0 **NRC ENFORCEMENT PROCESS**

The NRC's enforcement process has three basic steps.

- a. First, violations must be identified;
- b. Next, the NRC must assess the significance or severity of the violation; and
- c. Finally, the NRC must disposition the violation.

Throughout the process, an organization or individual subject to an NRC enforcement action has multiple opportunities to provide input.

2.1 Identification of Violations

The enforcement process begins with the identification of violations, either through NRC inspections or investigations, or through a licensee report, or by substantiation of an allegation.

¹ The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem); a Notice of Violation associated with an inspection finding that the Significance Determination Process evaluates as having low to moderate, or greater, safety significance (i.e., white, yellow, or red); or any order based upon a violation.

All violations are subject to consideration for civil enforcement action; some violations may also be considered for criminal prosecution by the U.S. Department of Justice. After an apparent violation is identified, it is assessed in accordance with this Policy. The NRC's enforcement assessment process is fact-driven, performance based, and, when possible, risk-informed. The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level appropriate to the safety-significance of the particular violation.

2.2 Assessment of Violations

After a violation is identified, its significance or severity is assessed. The assessment of the significance of a violation is generally reflected by the severity level (SL) assigned to the violation. For most violations committed by operating power reactor licensees, the significance of a violation is assessed using the significance determination process (SDP) under the Reactor Oversight Process (ROP) as discussed in section 2.2.3 below. Power reactor facilities under construction and nuclear materials facilities are not subject to the SDP. Therefore, traditional enforcement, as described below, is utilized.

2.2.1 Factors Affecting Assessment of Violations

The NRC uses risk information whenever possible in assessing the safety-significance of violations and assigning severity levels. A higher severity level 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. In determining the appropriate enforcement response to a violation, the NRC considers the following factors, which apply to both material and reactor licensees.

- a. Whether the violation resulted in actual safety or security consequences. In evaluating actual consequences, the NRC considers issues such as whether the violation resulted in the onsite or offsite releases of radiation, onsite or offsite radiation exposures, accidental criticality, core damage, loss of significant safety barriers, loss of control of radioactive material or radiological emergencies, the security system did not function as required and, as a result of the failure, there was a significant event, or there was an event that resulted in an act of radiological sabotage.
- b. Whether the violation has potential safety or security consequences. In evaluating potential consequences, the NRC considers whether the violation created a credible accident, security failure or exposure scenario that could potentially have significant actual consequences. For reactor facilities under construction, the NRC considers the actual or potential impact on the quality of construction and its resulting effect on the safety and security of the facility. Duration is an appropriate consideration in assessing the significance.
- c. Whether the violation impacted the ability of the NRC to perform its regulatory oversight function. The NRC considers the safety and security implications of noncompliances that may impact the NRC's ability to carry out its statutory mission. 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 reporting requirements, etc. Even inadvertent reporting failures are important because 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. The existence of a regulatory process violation does not automatically mean that the issue is safety or security significant. In determining the significance of a violation, the NRC will consider appropriate factors for the particular regulatory process violation. These factors may include: the significance of the underlying issue, whether the failure actually impeded or influenced regulatory action, the level of individuals involved in the failure and the reason why the failure occurred given their position and training, and whether the failure invalidates the licensing basis.

Unless otherwise categorized in the Supplements to this policy statement, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report. A licensee will, on the other hand, normally be cited for a failure to report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

- d. Whether the violation involved willfulness. Willful violations are of particular concern because the NRC's regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by the Commission. Therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. Violations with willful aspects will typically be considered for escalated enforcement, i.e., SL I, SL II, or SL III. The term "willfulness" as used in this policy refers to conduct involving either a careless disregard violation of requirements or deliberate violation of requirements. In determining the significance of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official² or non-supervisory employee), the significance of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the significance assessment will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be considered at least more than minor. Licensees are expected to take significant remedial action in responding to willful

² The term "licensee official" as used in this policy statement means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization.

2.2.2 Severity Levels

The NRC assesses significance, under its traditional enforcement process, by assigning a severity level to all violations by those subject to the NRC's enforcement authority as defined in Section 1.2 and to some violations by operating power reactor licensees. However, the majority of violations by reactor licensees are assessed under the ROP using the SDP (see section 2.2.3). (Examples of Severity Level I, II, III, and IV violations in 14 activity areas are provided in Section 6.0 of this Policy. The violation examples in this Policy are not intended to be exhaustive or controlling.)

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions. This judgment and discretion includes the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the significance of the violations and the surrounding circumstances.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

- a. Severity Level I violations are violations that resulted in or could have resulted in serious safety or security consequences; violations that involved systems failing when actually called upon to prevent or mitigate a serious safety or security event; or violations associated with a significant regulatory concern.
- b. Severity Level II violations are violations that resulted in or could have resulted in significant safety or security consequences, i.e., violations that created a potential of resulting in substantial safety or security consequences; or violations that involved systems not being capable, for an extended period, of preventing or mitigating a serious safety or security event.
- c. Severity Level III violations are violations that resulted in or could have resulted in moderate safety or security consequences, i.e., violations that created a high potential of resulting in moderate safety or security consequences; or violations that involve systems not being capable, for a relatively short period, of preventing or mitigating a serious safety or security event.
- d. Severity Level IV violations are violations that are less serious that resulted in no or relatively inappreciable potential safety or security consequences, i.e., violations that created potential of resulting in more than minor safety or security consequences. This does not imply that Severity Level IV issues have no risk significance.

- e. Minor violations are violations of minor safety, security or environmental concern that are below the level of concern of Severity Level IV violations. Minor violations generally do not warrant enforcement action, but nevertheless, must be corrected.

2.2.3 Operating Reactor Assessment Program

The assessment, disposition, and subsequent NRC action related to inspection findings identified at operating power reactors are determined by the Reactor Oversight Process (ROP) as described in NRC Inspection Manual Chapter (IMC) 0305, "Operating Reactor Assessment Program." Inspection findings identified through the ROP are assessed for safety significance using the significance determination process (SDP) described in IMC 0609, "Significance Determination Process." The SDP uses risk insights, where appropriate, to assist NRC staff in determining the safety or security significance of inspection findings identified within the ROP. Inspection findings processed through the SDP, including associated violations, are documented in inspection reports and are assigned one of the following colors, depending on their safety significance.

- a. Red - Inspection findings with high safety or security significance;
- b. Yellow - Inspection findings with substantial safety or security significance;
- c. White - Inspection findings with low to moderate safety or security significance;
- d. Green - Inspection findings with very low safety or security significance.

With the exceptions noted in section 2.2.3.1, violations associated with ROP inspection findings are not normally assigned severity levels, nor are they normally subject to civil penalties, although civil penalties are considered for any violation that involved actual consequences.

2.2.3.1 Exceptions to the Operating Reactor Assessment Program

Some inspection findings, and their associated violations, at operating power reactors cannot be evaluated through the Operating Reactor Assessment Program and are instead assigned severity levels and will be considered for civil penalties using traditional enforcement. These types of violations include:

- a. Violations that resulted in or could have resulted in substantial actual safety or security consequences, including, but not limited to:
 1. Violations resulting in radiation exposures to the public or plant personnel above regulatory limits;
 2. Violations involving failures to make required notifications that impact the ability of Federal, State, or local agencies to respond to actual emergencies;
 3. Violations resulting in transportation events; and
 4. Violations resulting in substantial releases of radioactive material.

- b. Violations that impact the ability of the NRC to perform its regulatory oversight function; and
- c. Violations involving willfulness.
- d. Violations of NRC requirements for which there are no associated SDP performance deficiencies

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.

2.3 Disposition of Violations

This section describes the various ways the NRC can disposition violations.

2.3.1 Minor violations:

Violations of minor safety or security concern generally do not warrant enforcement action or documentation in inspection reports, but must be corrected. Examples of minor violations can be found in the NRC Enforcement Manual, IMC 0612 (Appendix E) and in IMC 0616 (Appendix ?). Guidance for documenting minor violations can be found in the NRC Enforcement Manual, IMC 0610, IMC 0612, IMC 0613 and IMC 0616.

2.3.2 Violations [which are] more than minor:

Violations that are considered to represent more than a minor safety or security concern may be dispositioned in several ways as discussed below.

2.3.2.1 Non-Cited Violation (NCV):

Severity Level IV violations and violations associated with green SDP findings are normally dispositioned as NCVs. NCVs are documented in inspection reports or inspection records and include a brief description of the corrective action the licensee has taken or plans to take, if known. 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. Typically, all the following criteria must be met for a violation to be dispositioned as an NCV :

a. Power Reactor Licensees

1. The licensee must place the violation into a corrective action program to address recurrence³;

³ The corrective action program for reactor facilities under construction in accordance with 10 CFR Part 52 must have been demonstrated to be adequate.

2. The licensee must restore compliance within a reasonable period of time after a violation was identified;
3. The violation must not be repetitive as a result of inadequate corrective action and, if repetitive, the repetitive violation was not identified by the NRC. NOTE: This criteria does not apply to violations associated with green SDP findings and violations associated with facility construction under 10 CFR Part 52
4. The violation was not willful. Notwithstanding willfulness, an NCV may still be appropriate if:
 - (a) The licensee identified the violation and the information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional branch chief;
 - (b) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.A);
 - (c) The violation appears to be the isolated action of the employee without management involvement and the violation was not caused by lack of management oversight as evidenced by either a history of isolated willful violations or a lack of adequate audits or supervision of employees; and
 - (d) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization.

The approval of the Director, Office of Enforcement, is required for dispositioning willful violations as NCVs.

b. All Other Licensees

1. The licensee identified the violation;⁴
2. The licensee corrected or committed to correct the violation within a reasonable time by specific corrective action committed to by the end of the inspection, including immediate corrective action and comprehensive action to prevent recurrence;
3. The violation is not repetitive as a result of inadequate corrective action; and

⁴ An NOV is warranted when a licensee identifies a violation as a result of an event where the root cause of the event is obvious or the licensee had prior opportunity to identify the problem but failed to take action that would have prevented the event. Disposition as an NCV may be warranted if the licensee demonstrated initiative in identifying the violation's root cause.

4. The violation was not willful. Notwithstanding willfulness, an NCV may still be appropriate if it meets the criteria in Section 2.3.2.a.1.d above.

The approval of the Director, Office of Enforcement, is required for dispositioning willful violations as NCVs.

Notice of Violation (NOV): A NOV ([see 10 CFR 2.201](#)) is a written notice setting forth one or more violations of a legally binding requirement and normally requires the recipient to provide a written response describing: (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance has been, or will be, achieved. The NRC may waive all or portions of a written response to the extent that relevant information has already been provided to the NRC in writing or documented in an NRC inspection report or inspection record. The NRC may require responses to NOV's to be under oath; however, normally, responses under oath will be considered only for Severity Level I, II, or III violations; violations assessed using the SDP as White, Yellow or Red; or violations of NRC orders. An NOV may be issued in conjunction with a civil penalty.

Civil Penalty: A civil penalty ([see 10 CFR 2.205](#)) is a monetary penalty that the NRC may impose for violation of (1) certain specified licensing provisions of the AEA or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the [ERA](#). Based on the circumstances of a specific case, the NRC may increase a civil penalty where application of the guidance in this Policy would normally result in a zero penalty or a base civil penalty, in order to ensure that the proposed civil penalty reflects the safety-significance of the case. The NRC's policy of imposing graduated civil penalties generally takes into account the gravity of the violation as the primary consideration. Thus, operations involving greater nuclear material inventories and consequences to the public and workers receive higher civil penalties. The NRC does not intend that the economic impact of a civil penalty be so severe that it adversely affects a licensee's ability to safely conduct licensed activities or puts a licensee out of business (orders, rather than civil penalties, are used when the NRC's intent is to suspend or terminate licensed activities).

Violations assessed under the SDP normally are not considered for civil penalties. However, civil penalties are considered for violations associated with inspection findings evaluated through the ROP's SDP that involved actual consequences.

The NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit for each day the violation continues. 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.

The Commission recognizes that violations occur in a variety of activities and have varying impacts; therefore, the civil penalty Tables A and B in Section 8.0 of this Policy contain graduated sanctions based on the severity level of the violation. The tables present the base civil penalty, i.e., normal civil penalty, for any severity level violation for each type of licensee before consideration of factors to either escalate or use discretion to increase or decrease those

amounts. The civil penalty amounts applied should be those in effect at the time of the violation. The application of this policy is to ensure that associated enforcement actions properly reflect the safety or security significance of such violations.

The flow chart (Figure 2) presented below is a graphic representation of the civil penalty assessment process.

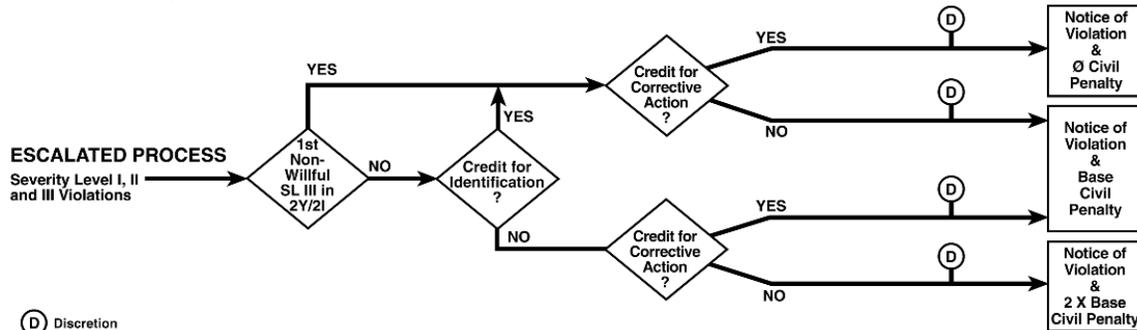


Figure 2

The civil penalty assessment process considers four decisional points:

- a. Whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past two years or past two inspections, whichever is longer; When the NRC determines that a non-willful Severity Level III violation or problem has occurred, and the licensee has not had any previous escalated actions (regardless of the activity area) during the past 2 years or 2 inspections, whichever is longer, the NRC will consider whether the licensee's corrective action for the present violation or problem is reasonably prompt and comprehensive (see the discussion under 2.3.2.3.c, below). Using 2 years as the basis for assessment is expected to cover most situations, but considering a slightly longer or shorter period might be warranted based on the circumstances of a particular case. The starting point of this period should be considered the date when the licensee was put on notice of the need to take corrective action. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

If the corrective action is judged to be prompt and comprehensive, an NOV normally should be issued with no associated civil penalty. If the corrective action is judged to be less than prompt and comprehensive, the NOV normally should be issued with a base civil penalty.

- b. Whether the licensee should be given credit for actions related to identification of the violation;
 1. If a Severity Level I or II violation or a willful Severity Level III violation has occurred-- or if, during the past 2 years or 2 inspections, whichever is longer, the licensee has

been issued at least one other escalated action--the civil penalty assessment should normally consider the factor of identification in addition to corrective action (see the discussion under 2.3.2.3.c, below). In these circumstances, the NRC should consider whether the licensee should be given credit for actions related to identification.

In each case, the decision should be focused on identification of the problem requiring corrective action. In other words, although giving credit for *Identification* and *Corrective Action* should be separate decisions, the concept of *Identification* presumes that the identifier recognizes the existence of a problem, and understands that corrective action is needed. The decision on *Identification* requires considering all the circumstances of identification including:

- (a) Whether the problem requiring corrective action was NRC-identified, licensee identified, or revealed through an event;
 - (b) Whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of those opportunities;
 - (c) Whether the problem was revealed as the result of a licensee self-monitoring effort, such as conducting an audit, a test, a surveillance, a design review, or troubleshooting;
 - (e) For a problem revealed through an event, the ease of discovery, and the degree of licensee initiative in identifying the root cause of the problem and any associated violations;
 - (f) For NRC-identified issues, whether the licensee would likely have identified the issue in the same time-period if the NRC had not been involved;
 - (g) For NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier; and
 - (h) For cases in which the NRC identifies the overall problem requiring corrective action (e.g., a programmatic issue), the degree of licensee initiative or lack of initiative in identifying the problem or problems requiring corrective action.
2. Although some cases may consider all of the above factors, the importance of each factor will vary based on the type of case as discussed in the following general guidance:
- (a) Licensee-Identified - When a problem requiring corrective action is licensee identified (i.e., identified before the problem has resulted in an event), the NRC should normally give the licensee credit for actions related to identification, regardless of whether prior opportunities existed to identify the problem.

- (b) Identified Through an Event - When a problem requiring corrective action is identified through an event, the decision on whether to give the licensee credit for actions related to identification normally should consider the ease of discovery, whether the event occurred as the result of a licensee self-monitoring effort (i.e., whether the licensee was "looking for the problem"), the degree of licensee initiative in identifying the problem or problems requiring corrective action, and whether prior opportunities existed to identify the problem.

Any of these considerations may be overriding if particularly noteworthy or particularly egregious. For example, if the event occurred as the result of conducting a surveillance or similar self-monitoring effort (i.e., the licensee was looking for the problem), the licensee should normally be given credit for identification. Even if the problem was easily discovered (e.g., revealed by a large spill of liquid), the NRC may choose to give credit because noteworthy licensee effort was exerted in ferreting out the root cause and associated violations, or simply because no prior opportunities (e.g., procedural cautions, post-maintenance testing, quality control failures, readily observable parameter trends, or repeated or locked-in annunciator warnings) existed to identify the problem.

- (c) NRC-Identified - When a problem requiring corrective action is NRC-identified, the decision on whether to give the licensee credit for actions related to *Identification* should normally be based on an additional question: should the licensee have reasonably identified the problem (and taken action) earlier?

In most cases, this reasoning may be based simply on the ease of the NRC inspector's discovery (e.g., conducting a walk down, observing in the control room, performing a confirmatory NRC radiation survey, hearing a cavitating pump, or finding a valve obviously out of position). In some cases, the licensee's missed opportunities to identify the problem might include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identifies the violation but concludes that, under the circumstances, the licensee's actions related to *Identification* were not unreasonable, the matter would be treated as licensee-identified for purposes of assessing the civil penalty. In such cases, the question of *Identification* credit shifts to whether the licensee should be penalized for NRC's identification of the problem.

- (d) Mixed Identification - For "mixed" identification situations (i.e., where multiple violations exist, some NRC-identified, some licensee-identified, or where the NRC prompted the licensee to take action that resulted in the identification of the violation), the NRC's evaluation should normally determine whether the licensee could reasonably have been expected to identify the violation in the NRC's absence. This determination should consider, among other things, the

timing of the NRC's discovery, the information available to the licensee that caused the NRC concern, the specificity of the NRC's concern, the scope of the licensee's efforts, the level of licensee resources given to the investigation, and whether the NRC's path of analysis had been dismissed or was being pursued in parallel by the licensee.

In some cases, the licensee may have addressed the isolated symptoms of each violation (and may have identified the violations), but failed to recognize the common root cause and taken the necessary comprehensive action. Where this is true, the decision on whether to give licensee credit for actions related to *Identification* should focus on identification of *the problem requiring corrective action* (e.g., the programmatic breakdown). As such, depending on the chronology of the various violations, the earliest of the individual violations might be considered missed opportunities for the licensee to have identified the larger problem.

- (e) Missed Opportunities to Identify.- Missed opportunities include prior notifications or missed opportunities to identify or prevent violations such as (1) through normal surveillances, audits, or quality assurance (QA) activities; (2) through prior notice, i.e., specific NRC or industry notification; or (3) through other reasonable indication of a potential problem or violation, such as observations of employees and contractors, and failure to take effective corrective steps. It may include findings of the NRC, the licensee, or industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to take action to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, consideration will be given to, among other things, the opportunities available to discover the violation, the ease of discovery, the similarity between the violation and the notification, the period of time between when the violation occurred and when the notification was issued, the action taken (or planned) by the licensee in response to the notification, and the level of management review that the notification received (or should have received).

The evaluation of missed opportunities should normally depend on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. Missed opportunities to identify is normally not applied where the licensee appropriately reviewed the opportunity for application to its activities and reasonable action was either taken or planned to be taken within a reasonable time.

In some situations the missed opportunity is a violation in itself. In these cases, unless the missed opportunity is a Severity Level III violation in itself, the missed opportunity violation may be grouped with the other violations into a single Severity Level III "problem." However, if the missed opportunity is the *only* violation, then it should not normally be counted twice (i.e., both as the violation and as a missed opportunity--"double counting") unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity should also be considered. While a rigid time-frame is unnecessary, a 2-year period should generally be considered for consistency in implementation, as the period reflecting relatively current performance.

3. When the NRC determines that the licensee should receive credit for actions related to *Identification*, the civil penalty assessment should normally result in either no civil penalty or a base civil penalty, based on whether *Corrective Action* is judged to be reasonably prompt and comprehensive. When the licensee is *not* given credit for actions related to *Identification*, the civil penalty assessment should normally result in a Notice of Violation with either a base civil penalty or a base civil penalty escalated by 100 percent, depending on the quality of *Corrective Action*, because the licensee's performance is clearly not acceptable.

- c. Whether the licensee's corrective actions were prompt and comprehensive;

The purpose of the *Corrective Action* factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes.

Regardless of other circumstances (e.g., past enforcement history, identification), the licensee's corrective actions should always be evaluated as part of the civil penalty assessment process. As a reflection of the importance given to this factor, an NRC judgment that the licensee's corrective action has not been prompt and comprehensive will always result in issuing at least a base civil penalty.

In assessing this factor, consideration will be given to the timeliness of the corrective action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's root cause analysis for the violation, and, given the significance and complexity of the issue, the comprehensiveness of the corrective action (i.e., whether the action is focused narrowly to the specific violation or broadly to the general area of concern). Even in cases when the NRC, at the time of the enforcement conference, identifies additional peripheral or minor corrective action still to be taken, the licensee may be given credit in this area, as long as the licensee's actions addressed the underlying root cause and are considered sufficient to prevent recurrence of the violation and similar violations.

Normally, the judgment of the adequacy of corrective actions will hinge on whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive corrective action. This will normally be judged at the time of the predecisional enforcement conference (e.g., by outlining substantive additional areas where corrective action is needed). Earlier informal discussions between the licensee and NRC inspectors or management may result in improved corrective action, but should not normally be a basis to deny credit for *Corrective Action*. For cases in which

the licensee does not get credit for actions related to *Identification* because the NRC identified the problem, the assessment of the licensee's corrective action should begin from the time when the NRC put the licensee on notice of the problem. Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive. Corrective action for violations involving discrimination should normally only be considered comprehensive if the licensee takes prompt, comprehensive corrective action that (1) addresses the broader environment for raising safety concerns in the workplace, and (2) provides a remedy for the particular discrimination at issue.

In response to violations of 10 CFR 50.59, corrective action should normally be considered prompt and comprehensive only if the licensee –

1. Makes a prompt decision on operability; and either
 2. Makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition; or
 3. Promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B, if it intends to restore the facility or procedure to the FSAR description.
- d. Whether, in view of circumstances surrounding the violation, the NRC should exercise enforcement discretion to either escalate or mitigate the amount of the civil penalty.

As provided in Section 3.6, "Use of Discretion in Determining the Amount of a Civil Penalty," discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects all relevant circumstances of the particular case. However, in no instance will a civil penalty for any one violation exceed \$140,000 per day.

2.3.2.3.1 Civil Penalties Associated with Loss of Regulated Material:

Loss of NRC regulated material is a significant regulatory concern due to potential unauthorized possession, use or overexposure to members of the public. Violations where regulated radioactive material remains out of the required control by a licensee for any period of time are treated separately, regardless of the use, license type, quantity, or type of radioactive material. Such violations may include but are not limited to, for example, the loss, abandonment, improper transfer, or disposal of a device, source, or other form of regulated material. 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. However, NRC may mitigate or escalate a civil penalty amount based on the merits of a specific case. When appropriate, NRC may consider, for example, information concerning the actual expected cost of authorized disposal and the actual consequences of the material remaining out of the control of the licensee.

2.3.2.4 Orders

An order is a written NRC directive to modify, suspend or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see [10 CFR 2.202](#)). Orders may be issued in lieu of, or in addition to, civil penalties, as appropriate, for Severity Level I, II, and III violations. Unless a separate response is warranted pursuant to [10 CFR 2.201](#), an NOV does not need to be issued in addition to the order when the NOV is based on violations described in the order. 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 or if the violation or conduct causing the violation is willful, the order may provide, for stated reasons, that the proposed action be immediately effective pending further order. Otherwise, a prior opportunity for a hearing on the order is afforded.

Orders may also be issued to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, or applicants for any such approvals, and to employees of any of the foregoing and to licensed individuals, such as licensed reactor operators, and non-licensed individuals.

2.3.2.5 Demand for Information:

The Commission may also issue a Demand for Information (DFI) (see 10 CFR 2.204) for the purpose of determining whether an order under 10 CFR 2.202 should be issued or whether other action should be taken.

2.3.3.6 Administrative Actions:

The NRC also uses administrative actions, such as Confirmatory Action Letters (CALs), Notices of Deviation (NODs), and Notices of Nonconformance (NONs) to supplement its enforcement program. These administrative actions are explained in the Enforcement Manual. The NRC expects licensees and other persons subject to the Commission's jurisdiction to adhere to any obligations and commitments resulting from administrative actions and will consider issuing additional orders, as needed, to ensure compliance.

2.3.2.7 Other: Import and Export of NRC Regulated Radioactive Material

The NRC will normally take enforcement action for violations of requirements related to import and export of NRC regulated radioactive material. Specifically, the import and export of the radioactive material (1) within the scope of an NRC license and (2) with implementation of any security programs that may be required are two examples of matters of importance where violations of corresponding requirements warrant consideration of escalated enforcement action.

2.3.3 Reopening Closed Enforcement Actions

Under special circumstances, i.e., where substantial new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, on a case-by-case basis, to reopening a closed enforcement action in order to increase or decrease the severity of a sanction or to correct the record.

Special circumstances include, but are not limited to, (a) a situation where persons provided incomplete or inaccurate information that would have been considered material to the NRC's disposition of a case, (b) information was deliberately withheld or obscured, or (c) the licensee made errors in calculations that would not have normally been reviewed by the NRC. Special circumstances do not include the discovery of additional information that was reasonably available to the NRC at the time the agency made its initial enforcement decision.

2.3.4 Enforcement Guidance Memorandum

Enforcement Guidance Memoranda (EGMs) are used to provide the NRC staff with temporary enforcement guidance, including, in some instances, enforcement discretion, when specified criteria are met. EGMs normally describe the situation that has occurred that requires the use of such guidance, as well as the length of time the EGM will be in effect. For a list of the current EGMs, see [Appendix A](#) of the NRC Enforcement Manual.

Commission Notification and Consultation

Certain enforcement actions require either advance written notification to the Commission or advance consultation with and approval by the Commission depending on the nature of the proposed sanction. Specific enforcement actions requiring prior Commission notification and consultation include, but are not limited to the following:

- a. Notification:
 1. All enforcement actions involving civil penalties or orders; and
 2. All Notices of Enforcement Discretion involving natural events, such as severe weather conditions.
 3. The first time that discretion is exercised for a plant that meets the criteria of Section 3.1, Violations Identified During Extended Shutdowns or Work Stoppages.
 4. Where appropriate, based on the uniqueness or significance of the issue, when discretion is exercised for violations that meet the criteria of Section 3.5, Violations Involving Special Circumstances.
- b. Consultation:
 1. An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating against the potential radiological or other hazards associated with continued operation;
 2. Proposals to impose a civil penalty for a single violation or problem that is greater than 3 times the Severity Level I value shown in Table A for that class of licensee;
 3. Any proposed enforcement action that involves a Severity Level I violation;

4. Any action the EDO believes warrants Commission involvement;
5. Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and
6. Any proposed enforcement action on which the Commission asks to be consulted.

2.4 Participation in the Enforcement Process

Prior to making a final enforcement decision in cases where the NRC is considering taking escalated enforcement action, i.e., a Severity Level III or higher NOV or a greater than green SDP finding, the organization or individual subject to the enforcement action will typically be offered a conference with the NRC to present facts relevant to the assessment and disposition of the violation. The conference is normally held at an NRC regional office and is normally open to public observation except when the proposed enforcement action involves discussions of classified or safeguards information, privacy information, proprietary information, or other sensitive, non-public information. In addition, licensees and individuals can be offered Alternative Dispute Resolution (see section 2.4.3).

2.4.1 Predecisional Enforcement Conference

For violations assessed using a Severity Level, the conference is called a Predecisional Enforcement Conference (PEC). The purpose of the PEC is to obtain information to assist the NRC in determining the appropriate enforcement action, such as (a) a common understanding of the facts, root causes and missed opportunities associated with the apparent violation, and (b) a common understanding of the corrective actions taken or planned to be taken. If the NRC concludes that it has sufficient information to make an informed enforcement decision involving a licensee, contractor, or vendor, a predecisional enforcement conference will not normally be held. If a predecisional enforcement conference is not held, the licensee may be given an opportunity to respond to a documented apparent violation (including its root causes and a description of planned or implemented corrective actions) before the NRC takes enforcement action. However, if the NRC has sufficient information to conclude that a civil penalty is not warranted, it may proceed to issue an enforcement action without first obtaining the licensee's response to the documented apparent violation.

The NRC will normally provide an opportunity for an individual to address apparent violations before the NRC takes escalated enforcement action. Whether an individual will be provided an opportunity for a predecisional enforcement conference or an opportunity to address an apparent violation in writing will depend on the circumstances of the case, including the severity of the issue, the significance of the action the NRC is contemplating, and whether the individual has already had an opportunity to address the issue (e.g., an Office of Investigation or a Department of Labor hearing).

2.4.2 Regulatory Conference

For power reactor inspection findings assessed using the significance determination process,

the conference is called a Regulatory Conference. For reactor inspection findings that are preliminarily assessed as greater than Green, the licensee will normally be given an opportunity to meet with the NRC to exchange information related to that assessment. Because the significance assessment typically requires a determination whether violations occurred, a subsequent PEC is not normally required.

2.4.3 Alternative Dispute Resolution

The [*Administrative Dispute Resolution Act of 1996 \(ADRA\)*](#) authorizes and encourages the use of Alternative Dispute Resolution (ADR) by Federal agencies. ADR is a term that refers to a variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures. Mediation is the form of ADR typically utilized by the NRC. The use of ADR in the NRC's enforcement program is provided for cases involving discrimination and other wrongdoing cases after the NRC Office of Investigations has completed an investigation, i.e., post-investigation ADR, and the NRC concludes that pursuit of an enforcement action appears warranted. ADR may also be used for discrimination violations based solely on a finding by the U.S. Department of Labor (DOL); however, the NRC will not negotiate the finding by DOL. Individuals within the Commission's jurisdiction may also be offered ADR. Generally, post-investigation ADR proceeds in parallel and works in conjunction with the traditional NRC enforcement program. ADR may be offered (1) prior to a PEC, (2) with the issuance of an NOV, or (3) with the imposition of a civil penalty. Use of the ADR program is voluntary by all parties, including the NRC, and may be ended by any participant at any time; mediation activities are kept confidential in accordance with 5 U.S.C. 574; and the terms of the settlement agreement are normally formalized in a Confirmatory Order which is published in the *Federal Register*. Normally, there is a press release regarding the settlement.

In addition, licensees can utilize ADR to resolve discrimination complaints prior to the initiation of an investigation by OI, i.e., early-ADR. Licensees may utilize the NRC's ADR program (see NRC Management Directive 8.8, "Management of Allegations") or a licensee sponsored program. If the parties reach a settlement agreement utilizing early-ADR that is subsequently approved by the NRC before the initiation of an OI investigation, then the NRC will not pursue the matter utilizing the traditional enforcement process.

For additional information concerning the NRC's post-investigation ADR program refer to chapter 6 of the Enforcement Manual or visit the NRC web site at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>.

There may be circumstances under which it may not be appropriate for the NRC to engage in ADR, e.g., there has been substantial U.S. Department of Justice involvement in the case, cases in which the subject matter is such that a Confirmatory Order detailing the terms of a settlement agreement cannot be made public, or other particularly egregious cases in which the public interest is not served by engaging in ADR. The approval of the Director, OE, is required in those cases where the staff proposes not to offer ADR.

3.0 USE OF ENFORCEMENT DISCRETION

The NRC may choose to exercise discretion and either escalate or mitigate enforcement

sanctions or otherwise refrain from taking enforcement action within the Commission's statutory authority. The exercise of discretion allows the NRC to determine what actions should be taken in a particular case, notwithstanding the guidance contained in this statement of policy. After considering the general tenets of this policy and the safety-security significance of a violation and its surrounding circumstances, judgment and discretion may be exercised in determining the severity levels of violations and the appropriate enforcement sanctions to be taken.

3.1 Violations Identified During Extended Shutdowns or Work Stoppages

Notwithstanding the outcome of the normal NOV and civil penalty assessment processes, the NRC may reduce or refrain from issuing a NOV or a proposed civil penalty for a Severity Level II, III, or IV violation that is identified after:

- a. the NRC has taken significant enforcement action based on a major safety event contributing to an extended shutdown of an operating nuclear reactor or a material licensee (or a work stoppage at a construction site), or
- b. the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or inspection records for some materials cases); and that it meets all of the following criteria:
 1. The violation was either licensee-identified as a result of a comprehensive program for violation identification and correction developed in response to the shutdown or identified as a result of an employee or contractor concern identified to the licensee through its internal processes; and
 2. The violation was based upon activities of the licensee prior to the events leading to the shutdown; and
 3. The violation would not be categorized at Severity Level I; and
 4. The violation was not willful; and
 5. The licensee's decision to restart the plant requires NRC concurrence.

The approval of the Director, Office of Enforcement, is required for exercising such discretion when a willful violation is involved.

3.2 Violations Involving Old Design Issues

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 efforts such as normal surveillances or routinely scheduled quality assurance (QA) activities

In addition, the NRC may refrain from issuing an NOV for a Severity Level II, III, or IV violation that meets the above criteria provided the violation was caused by conduct that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

3.3 Violations Identified Due to Previous Enforcement Action

The NRC may refrain from issuing an NOV or a proposed civil penalty for a Severity Level II, III, or IV violation that is identified after the NRC has taken enforcement action, if the violation is licensee-identified as part of the corrective action for the previous enforcement action and the violation has the same or similar root cause as the violation for which enforcement action was previously issued. Additionally, the new example must not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation and must be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

3.4 Violations Involving Certain Discrimination Issues

For violations of the NRC's employee protection regulations, e.g. 10 CFR 50.7 and 10 CFR 52.5, the NRC may exercise discretion to mitigate enforcement sanctions and refrain from issuing a civil penalty and/or an NOV when a licensee who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and, if required, the overall work environment for raising safety concerns.

Similarly, the NRC may exercise discretion when a licensee settles a complaint filed with the Department of Labor (DOL) under section 211 of the [ERA](#) before the DOL makes an initial finding of discrimination, and, as necessary, addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee, and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated.

The NRC may also exercise discretion in discrimination cases in which a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor, allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

3.5 Violations Involving Special Circumstances

Notwithstanding the outcome of the normal enforcement process, the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II, III, or IV violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the significance of the violation, the clarity of the requirement, the appropriateness of the requirement, the overall sustained performance of the licensee, and other relevant circumstances, including any that may have changed since the violation occurred. This discretion is expected to be exercised only where application of the normal guidance in the policy is unwarranted. In addition, the NRC may refrain from issuing enforcement action for violations resulting from matters not within a licensee's control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees and contractors. Accordingly, this policy should not be construed to excuse personnel or contractor errors.

3.6 Use of Discretion in Determining the Amount of a Civil Penalty

Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section 2.3.2, the NRC may exercise discretion⁵ by either proposing a civil penalty where application of the civil penalty assessment factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty in order to ensure that the proposed civil penalty appropriately reflects the significance of the issue. The Commission must be notified if the amount of the proposed civil penalty is more than two times the base civil penalty shown in Tables A and B for the severity level violation being considered.

Civil Penalty discretion should be considered for, but is not limited to, the following:

- a. Violations or Problems originally categorized at a Severity Level I or II;
- b. Overexposures, or the release of radiological material in excess of NRC requirements;
- c. Particularly poor licensee performance;

⁵ In the context of this section, 'discretion' refers to the escalation of an enforcement action/sanction. This differs from the typical use of the term 'discretion' used when the NRC chooses not to take enforcement action for an issue.

- d. Situations when the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation;
- e. Willfulness;
- f. Instances where the licensee made a conscious decision to be in noncompliance with NRC requirements in order to obtain an economic benefit; or
- g. Situations where the violation resulted in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase in risk.

3.7 Exercise of Discretion to Issue Orders

The NRC may exercise discretion, where necessary or desirable, by issuing orders with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3.8 Notices of Enforcement Discretion (NOED) for Operating Power Reactors and Gaseous Diffusion Plants

The NRC may choose not to enforce the applicable Technical Specification (TS) Limiting Condition for Operation or other license conditions, in circumstances where compliance would involve an unnecessary plant transient or the performance of a test, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup, without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant (GDP), circumstances may arise where compliance with a Technical Safety Requirement (TSR) or technical specification or other certificate condition would unnecessarily call for a total plant shutdown or, notwithstanding that a safety, safeguards, or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

An NOED will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety or security. The NRC staff may also grant enforcement discretion in cases involving severe weather or other natural phenomena. The use of an NOED is based upon balancing the public health and safety or common defense and security of not operating against the potential radiological or other hazards associated with continued operation, and a determination that safety or security will not be impacted unacceptably by exercising this discretion.

Issuance of an NOED does not change the fact that a violation will occur, nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the NRC has chosen to issue an NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used.

Additional guidance on the process for issuing an NOED is found on the NRC's website at <http://www.nrc.gov/reading-rm/doc-collections/insp-manual/technical-guidance/tgnoed.pdf>.

3.9 Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

This section sets forth the interim enforcement policy that the U.S. Nuclear Regulatory Commission (NRC) will follow to exercise enforcement discretion for certain noncompliances of requirements in 10 CFR 50.48, “Fire protection,” (or fire protection license conditions) that are identified as a result of the transition to a new risk-informed, performance-based fire protection approach included in paragraph (c) of 10 CFR 50.48 and for certain existing identified noncompliances that reasonably may be resolved by compliance with 10 CFR 50.48(c). Paragraph (c) allows reactor licensees to voluntarily comply with the risk informed, performance-based fire protection approaches in National Fire Protection Association Standard 805 (NFPA 805), “Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants,” 2001 Edition (with limited exceptions stated in the rule language).

For those noncompliances identified during the licensees’ transition process, this enforcement discretion policy will be in effect for up to 3 years from the date specified by the licensee in their letter of intent to adopt the requirements in 10 CFR 50.48(c). This enforcement discretion will continue to be in place until NRC disposes the licensees’ amendment request to transition to 10 CFR 50.48(c). The Office of Nuclear Reactor Regulation (NRR) Office Instruction LIC-109 “Acceptance Review Procedures” (ML081200811) will be utilized to process the license amendment request (LAR). If the amendment is acceptable for review, enforcement discretion will continue to be in place, without interruption, until it is disposed by the NRC. If the amendment is unacceptable with opportunity to supplement, the enforcement discretion will continue while under review by the staff. If after receipt of the supplemental information and the amendment is determined to be acceptable for review, enforcement discretion will continue until the amendment is disposed by the NRC. Submittals that are not acceptably supplemented or submittals initially characterized as unacceptable with no opportunity to supplement will be disposed in accordance with normal enforcement practices.

An additional period of enforcement discretion may be granted on a case-by-case basis, if a licensee has made substantial progress in its transition effort. This additional period of discretion, if granted, would end 6 months after the date of the safety evaluation approving the second pilot plant⁶ LAR review.

The NRC will assess “substantial progress” based on accomplishment of tasks that are not resource-limited with respect to fire probabilistic risk assessment (PRA) technical expertise (e.g., classical fire protection transition, deterministic nuclear safety performance criteria transition, non-power operational transition, radioactive release transition, development of the NFPA 805 monitoring program, operator manual action transition to NFPA 805 recovery actions). In order for the NRC to adequately evaluate the transition progress, licensees that request enforcement discretion beyond the three years currently available should make their request to the NRC in writing at least 3 months before the expiration of the 3-year discretion period and compile or submit the following information:

- Compile, for on-site NRC audit/inspection, a list of all fire protection-related noncompliances and the related compensatory measures for those noncompliances.

⁶ The NRC accepted the request from both Duke Power (ML051080005) and Progress Energy (ML052140391) to allow Oconee Nuclear Power Station and Shearon Harris Nuclear Power Station respectively, to become pilot NFPA 805 plants.

- Document, for onsite NRC audit/inspection, that each Operator Manual Action put in place as compensatory measures are feasible and reliable, in accordance with staff provided guidance in Regulatory Issue Summary 2005-07, “Compensatory Measures to Satisfy the Fire Protection Program Requirements.”
- Submit a description of the physical modifications performed, if any, to address existing risk-significant fire protection issues.
- Submit a status report of the transition, including a schedule of milestones for completing the fire PRA. The status report should be broken down into the following major areas:
 - Classical fire protection transition (in accordance with NFPA 805 Chapter 3)
 - Nuclear Safety Performance Criteria transition (in accordance with NFPA 805 chapters 1, 2 and 4)
 - Nonpower operational transitions
 - NFPA 805 monitoring program

If the NRC determines that a licensee has not made sufficient progress during the transition to NFPA 805, the NRC will deny the request for an extension of enforcement discretion.

If, after submitting the letter of intent to comply with 10 CFR 50.48(c) and before submitting the license amendment request, the licensee decides not to complete the transition to 10 CFR 50.48(c), the licensee must submit a letter stating its intent to retain its existing licensing basis and withdrawing its letter of intent to comply with 10 CFR 50.48(c). After the licensee’s withdrawal from the transition process, the staff, as a matter of practice, will not take enforcement action against any noncompliance that the licensee corrected during the transition process and will on a case-by-case basis, consider refraining from taking action if reasonable and timely corrective actions are in progress (e.g., an exemption has been submitted for NRC review). Noncompliances that the licensee has not corrected, as well as noncompliances identified after the date of the above withdrawal letter, will be dispositioned in accordance with normal enforcement practices.

a. Noncompliances Identified During the Licensee’s Transition Process

Under this interim enforcement policy, enforcement action normally will not be taken for a violation of 10 CFR 50.48(b) (or the requirements in a fire protection license condition) involving a problem such as in engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets all of the following criteria:

1. It was licensee-identified, as a result of its voluntary initiative to adopt the risk-informed, performance-based fire protection program included under 10 CFR 50.48(c) or, if the NRC identifies the violation, it was likely in the NRC staff’s view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee’s transition to 10 CFR 50.48(c) provided the schedule reasonably provides for completion of the transition within 3 years of the date specified by the licensee in their letter of intent to implement 10 CFR 50.48(c) or other period granted by NRC;

2. It was corrected or will be corrected as a result of completing the transition to 10 CFR 50.48(c). Also, immediate corrective action and/or compensatory measures are taken within a reasonable time commensurate with the risk significance of the issue following identification (this action should involve expanding the initiative, as necessary, to identify other issues caused by similar root causes);
3. It was not likely to have been previously identified by routine licensee efforts such as normal surveillance or quality assurance (QA) activities; and
4. It was not willful.

The NRC may take enforcement action when these conditions are not met or when a violation that is associated with a finding of high safety significance is identified.

While the NRC may exercise discretion for violations meeting the required criteria where the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report.

b. Existing Identified Noncompliances

In addition, licensees may have existing identified noncompliances that could reasonably be corrected under 10 CFR 50.48(c). 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 submitted a letter of intent by December 31, 2005, stating its intent to transition to 10 CFR 50.48(c).

After December 31, 2005, as addressed in number 4 above, this enforcement discretion for implementation of corrective actions for existing identified noncompliances will not be available and the requirements of 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) will be enforced in accordance with normal enforcement practices. However, licensees that submitted letters of intent to transition to 10 CFR 50.48(c) with existing noncompliances will have the option to implement corrective actions in accordance with the new performance-based regulation. All other elements of the assessment and enforcement process will be exercised even if the licensee submitted its letter of intent before the NRC issues its enforcement action for existing

noncompliances.

4.0 ENFORCEMENT ACTIONS AGAINST INDIVIDUALS

Enforcement actions involving individuals, including licensed operators, are significant actions and will be closely scrutinized and judiciously applied. An enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual:

- a. Fully understood his or her responsibility;
- b. Knew the required actions were not taken; and
- c. Knowingly failed to take required actions which have actual or potential safety significance.

Although the NRC considers the above before taking action against both licensed and non-licensed individuals, enforcement actions may be taken against NRC licensed operators, regardless of whether the violation involved willfulness, since the enforcement action would be taken directly against the operator as a licensee. Enforcement actions against non-licensed individuals will only be taken in those cases involving deliberate misconduct. Notices of Violation and Orders are examples of enforcement actions that may be appropriate against individuals. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other action should be issued.

The NRC will normally provide the individual an opportunity to address the apparent violation at a PEC or in writing before taking any enforcement action. The opportunity to address the apparent violations will depend on the circumstances of the case, including the severity of the issue, the enforcement sanction the NRC is contemplating, and whether the individual has already had an opportunity to address the issue (e.g., an OI investigation or a Department of Labor hearing).

4.1 Circumstances When Enforcement Action Against An Individual May Be Taken

The NRC's policy is that, in general, licensees are responsible for the acts of their employees and contractors; therefore, normally the NRC will choose to cite the licensee in most violations involving an individual's actions. Violations in which the significance would typically warrant escalated enforcement action for the licensee may warrant an enforcement action against an individual (e.g., deliberately providing inaccurate or incomplete information or deliberate falsification of documents). Violations involving careless disregard by an unlicensed individual may result in enforcement action against a licensee that may indirectly impact an individual. Typically, the NRC will not take enforcement action against the individual if management's failures (e.g., improper training or inadequate procedures) are responsible for the individual's improper actions. In deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee, judgments will be made on a case-by-case basis.

- a. Deliberate Misconduct

The NRC has the authority to issue enforcement actions to any individual (licensed or unlicensed) who (1) deliberately causes or would have caused, if not detected, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission related to NRC-licensed activities; or (2) deliberately provides materially inaccurate or incomplete information to the NRC, a licensee, an applicant or a licensee, or a contractor or subcontractor of a licensee or applicant for a license. (See, for example, 10 CFR 30.10, 10 CFR 50.5, 10 CFR 52.4, and 10 CFR 76.10)

b. Primary Considerations for Sanctions Against Individuals

In deciding whether to issue an enforcement action to an individual as well as to the licensee, the NRC recognizes that judgments will have to be made on a case-by-case basis. The NRC may choose to refrain from taking action or propose a different action to ensure that the agency position takes into consideration all of the relevant circumstances of each case. Typically, the significance of the substance of the violation or underlying technical issue (not considered in discrimination cases) and the individual's position within the organization, i.e., notwithstanding an individual's job title, the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material, are the primary initial considerations.

c. Additional Considerations

Factors considered in determining the appropriate enforcement sanction (if any) include, but are not limited to, the following:

1. The benefit to the wrongdoer, e.g., direct personal or corporate gain.
2. The degree of management responsibility or culpability.
3. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.

4.2 NOVs and Orders to Individuals

4.2.1 Licensed Individuals

The Commission has the authority to issue NOVs to any individual who holds an NRC license (e.g., licensed reactor operators) for violations of NRC requirements, regardless of whether willfulness, either deliberate misconduct or careless disregard, was involved. However, individual actions other than willful violations are rare. In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a NOV to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license.

Orders may also be issued to licensed individuals which include provisions that would prohibit involvement in NRC-licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing

specified training or meeting certain qualifications, and normally requires (a) notification to the NRC before the individual resumes work in NRC-licensed activities, and (b) the individual to inform a prospective employer or customer engaged in NRC-licensed activities that the person has been subject to an NRC order. Such orders may also involve revocation of the individual's license.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, appropriate enforcement actions may be taken regarding matters that raise issues

of integrity, competence, fitness-for-duty, or other matters that may not necessarily be a violation of specific Commission requirements.

4.2.2 Non-Licensed Individuals

The Commission's enforcement policy is also applicable to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, quality assurance program approvals, or applicants for any of them, and to employees of any of the foregoing, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. However, NRC will not normally issue an enforcement action against a non-licensed individual unless the individual's actions were a result of deliberate misconduct. Notices of Violation issued to non-licensed individuals will not normally be assigned severity levels. When needed to ensure adequate protection of public health and safety and the common defense and security or the public interest, the NRC may issue an order to an unlicensed person, whether a firm or an individual, requiring: (a) the removal of the person from all NRC licensed activities for a specified period of time or indefinitely (normally the period of suspension would not exceed 5 years), (b) prior notice to the NRC before engaging in NRC-licensed activities, or (c) NRC licensees to inform other persons or licensees, who make reference inquiries, of the issuance of such an order. In addition, orders to employers might require retraining, additional oversight, or independent verification of activities performed by the person, if the person is to be involved in licensed activities.

Initial determination of a period of prohibition from licensed activities is normally based on the significance of the underlying violation and the individual's level of responsibility. A high level of significance combined with a high degree of responsibility results in initially considering a 5-year prohibition period. Additional considerations, described above, may result in either escalation or mitigation of the prohibition period.

4.3 Civil Penalties to Individuals

Except for individuals subject to civil penalties under section 206 of the [ERA](#), as amended, the NRC will not normally impose a civil penalty against an individual. However, section 234 of the AEA gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in section 11s. of the AEA to include individuals, a variety of organizations, and their representatives or agents.

4.4 Confirmatory Orders to Individuals

Agreements with individuals reached as a result of the ADR process are normally formalized by the issuance of a Confirmatory Order. ADR is typically offered to individuals consistent with the process used for licensees (see sections 2.4.3 and 3.4 of this Policy)

5.0 PUBLIC AVAILABILITY OF INFORMATION REGARDING ENFORCEMENT ACTIONS

In accordance with 10 CFR 2.390, enforcement actions and licensees' responses are normally made publicly available for inspection. However, some security-related information will not be made available to the public. The Office of Public Affairs (OPA) is responsible for making final decisions as to whether press releases will be issued; however, such releases are normally issued for orders and civil penalties at the same time that the order or proposed imposition of the civil penalty is issued. Press releases may also be issued when a civil penalty is withdrawn or substantially mitigated. Press releases are not normally issued for NOVs that are not accompanied by orders or proposed civil penalties, unless the issue or licensee involved is one of some particular interest.

6.0 SUPPLEMENTS – EXAMPLES OF VIOLATIONS

The violation examples in this Policy are intentionally broad in scope so as to serve as a set of guiding examples that are neither exhaustive nor controlling for severity level determinations. Specifically, the examples in the Supplements are not intended to address every possible circumstance. Further, when an enforcement case scenario very nearly achieves all or some of the criteria set forth in a Supplement example, the case will normally be considered to be at the severity level for that example. For example, when using the Health Physics Supplement, if the circumstances of a case are such that one or more of the levels in an example were very nearly reached and it was only fortuitous that the limit was not actually met and/or exceeded, then the severity level for the subject example would be applicable. Additionally, if the circumstances for a case of a specific license/certificate category are comparable to an example that is written for a scenario with a different type of license/certificate category and in the same applicable Supplement, the severity level for the subject example will normally be considered applicable to the case (e.g., the case for an industrial licensee presents a comparable set of circumstances/considerations as the medical example provided in the Materials Supplement; hence the severity level for the medical example can be applied).

6.1 Reactor Operations

a. *Severity Level I* Violations involve, for example:

1. A system designed to prevent or mitigate a serious safety event unable to perform its intended safety function when actually called upon to work;
2. An accidental criticality; or

3. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, being exceeded.
- b. *Severity Level II* Violations involve, for example:
1. A system designed to prevent or mitigate serious safety events unable to perform its intended safety function.
- c. *Severity Level III* Violations involve, for example:
1. A failure to comply with a Technical Specification Action requirement when a Limiting Condition for Operation is not met;
 2. A system designed to prevent or mitigate a serious safety event not being able to perform its function under certain conditions (e.g., a safety system not operable unless offsite power is available or materials or components not environmentally qualified);
 3. Changes in reactor parameters that cause unanticipated reductions in margins to safety;
 4. A licensee's failure to conduct adequate oversight of contractors resulting in the use of products or services that are defective or of indeterminate quality and that has safety significance;
 5. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;
 6. Failure to obtain prior Commission approval required by 10 CFR 50.59 for a change in which the consequence of the change is evaluated as having low to moderate or greater safety significance (i.e., White, Yellow, or Red) by the Significance Determination Process (SDP);
 7. The failure to update the Final Safety Analysis Report (FSAR) as required by 10 CFR 50.71(e) where the un-updated FSAR was used to perform a 10 CFR 50.59 evaluation for a change to the facility or procedures, implemented without Commission approval, that results in a condition evaluated as having low to moderate or greater safety significance (i.e., White, Yellow, or Red) by the SDP; or
 8. The failure to make a report required by 10 CFR 50.72 or 50.73 associated with any Severity Level III violation.
- d. *Severity Level IV* Violations involve, for example:
1. A less significant failure to comply with a Technical Specification Action requirement when a Limiting Condition for Operation is not met;
 2. A failure to meet regulatory requirements that have more than minor safety

significance;

3. A failure to make a required Licensee Event Report;
4. Violations of 10 CFR 50.59 that results in conditions evaluated as having very low safety significance (i.e., Green) by the SDP;
5. A failure to update the FSAR as required by 10 CFR 50.71(e) in cases where the erroneous information is not used to make an unacceptable change to the facility or procedures; or
6. A failure to adequately assess the risk of plant operations when a risk informed Technical Specification allowance is implemented.

6.2 Fuel Cycle Operations

Note: This supplement provides examples in the area of fuel cycle operations for licensees with an Integrated Safety Analysis (ISA) under 10 CFR Part 70, Subpart H, and fuel cycle licensees without an ISA. NRC will determine the appropriate severity level for a specific violation by using licensee ISAs and other applicable risk information.

a. *Severity Level I* Violations involve, for example:

1. Under 10 CFR Part 70, Subpart H, a high consequence event occurs; or

For licensees not under 10 CFR Part 70, Subpart H, an event with a consequence commensurate with a 10 CFR Part 70 high consequence occurs from licensed materials or hazardous chemicals produced from licensed materials.

b. *Severity Level II* Violations involve, for example:

1. Under 10 CFR Part 70, Subpart H, a high consequence event is now “not unlikely” based on a licensee ISA;
2. Under 10 CFR Part 70, Subpart H, an intermediate consequence event occurs;
3. For licensees not under 10 CFR Part 70, Subpart H, a very substantial increase in the likelihood of a consequence commensurate with a Part 70 high consequence occurs; or
4. For licensees not under 10 CFR Part 70, Subpart H, an event with a consequence commensurate with a Part 70 intermediate consequence occurs from licensed materials or hazardous chemicals produced from licensed materials.

c. *Severity Level III* Violations involve, for example:

1. Under 10 CFR Part 70, Subpart H, a high consequence event is now “unlikely” based on a licensee ISA;
 2. Under 10 CFR Part 70, Subpart H, an intermediate consequence event is now “not unlikely” based on a licensee ISA;
 3. For licensees not under 10 CFR Part 70, Subpart H, a substantial increase in the likelihood of a consequence commensurate with a Part 70 high consequence occurs;
 4. For licensees not under 10 CFR Part 70, Subpart H, a significant increase in the likelihood of a consequence commensurate with a Part 70 intermediate consequence occurs;
 5. A failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time;
 6. Under 10 CFR 70.72 or 10 CFR 76.68, a failure to adequately evaluate a change to the facility with at least a low safety significance resulting in implementation of the change without a required license or certificate amendment;
 7. Under 10 CFR 70.24 or 10 CFR 76.89, a criticality accident alarm system fails to provide either detection or annunciation coverage for a substantial time period during which operations involving handling or using fissile material occurred;
 8. During an actual Site Area Emergency, licensee failure to promptly and correctly
 - (a) Classify the event,
 - (b) Make required notifications to responsible Federal, State, and local agencies, or
 - (c) Respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff) during a site area emergency; or
 9. A failure to meet or implement more than one emergency planning standard.
- d. *Severity Level IV* Violations involve, for example:
1. Under 10 CFR Part 70, Subpart H, a failure to meet the requirements of 10 CFR 70.61, or Appendix A to 10 CFR Part 70, that does not result in a Severity Level I, II, or III violation;
 2. A failure of safety systems or controls such that an acceptable safety margin has not been maintained that does not result in a Severity Level I, II, or III violation;

3. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;
4. Under 10 CFR 70.72 or 10 CFR 76.68, a failure to adequately evaluate a change to the facility with at least a very low safety significance results in implementation of the change without a required license or certificate amendment, and that does not result in a Severity Level I, II, or III violation;
5. A failure to make a required written event report, as required by 10 CFR 70.50(c)(1), Appendix A to 10 CFR Part 70, or 10 CFR 76.120(d)(2);
6. Under 10 CFR 70.24 or 10 CFR 76.89, a criticality accident alarm system failed to provide either detection or annunciation coverage of fissile material operations during a time period when fissile material was handled, used or stored;
7. During an actual Alert emergency, a failure to promptly and correctly
 - (a) Classify the event,
 - (b) Make required notifications to responsible Federal, State, and local agencies, or
 - (c) Respond to the event (e.g., assess actual or potential onsite consequences, activate emergency response facilities, and if necessary augment shift staff) during an alert emergency;
8. A failure to meet or implement more than one emergency planning standard involving assessment or notification during an alert emergency; or
9. A failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification (e.g., emergency response training, emergency equipment maintenance.)

6.3 Materials Operations

a. *Severity Level I* Violations involve, for example:

1. The loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, which results in serious injury or loss of life, whether or not radioactive material is released;
2. A system designed to prevent or mitigate a serious safety event being inoperable when actually required to perform its design function that results in a death or serious injury (e.g., substantial organ impairment) or in a loss of control over licensed material that has serious consequences;

3. Failure to use a properly prepared written directive as required by 10 CFR 35.40, or failure to develop, implement, or maintain procedures for administrations requiring a written directive as required by 10 CFR 35.41; that results in a death or serious injury (e.g., substantial organ impairment); or
 4. Failure to have and/or to follow written operating procedures as required by 10 CFR 36.53 that results in a serious injury or death.
- b. *Severity Level II* Violations involve, for example:
1. A system designed to prevent or mitigate a serious safety event being inoperable when actually required to perform its design function;
 2. A substantial programmatic failure to implement written directives or procedures for administrations requiring a written directive, such as a failure of the licensee's procedures to address one or more of the elements in 10 CFR 35.40 or 35.41, or a failure to train personnel in those procedures, that results in a medical event;
 3. Failure to have and/or to follow written operating procedures as required by 10 CFR 36.53 that results in an substantial potential for a serious injury or death; or
 4. The loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, which results in the substantial potential for a significant injury or loss of life, whether or not radioactive material is released;
- c. *Severity Level III* Violations involve, for example:
1. A system designed to prevent or mitigate a serious safety event;
 - (a) Not being able to perform its intended function under certain conditions (e.g., a safety system not operable unless the required backup power is available), or
 - (b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;
 2. Failure to secure a portable gauge with at least two independent physical controls whenever the gauge is not under the control and constant surveillance of the licensee as required by 10 CFR 30.34(i);
 3. A significant failure to implement the requirements of 10 CFR 34 during radiographic operations including but not limited to:
 - (a) A failure, during radiographic operations at a location other than a permanent radiographic installation, to have present a radiographer and at least one additional radiographer or qualified individual,

- (b) A failure, during radiographic operations, to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34, or
 - (c) A failure, during radiographic operations, to stop work after a pocket dosimeter is found to have gone off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination is made of the individual's actual radiation exposure;
4. Conduct of licensed activities by a technically unqualified or uncertified person;
 5. A programmatic failure to implement written directives or procedures for administrations requiring a written directive, such as:
 - (a) A failure of the licensee's procedures to address one or more of the elements in 10 CFR 35.40 or 35.41,
 - (b) A failure to train personnel in procedures for administrations requiring a written directive, or
 - (c) A programmatic weakness in the implementation of written directives or procedures for administrations requiring a written directive, where there was either an actual medical event or a substantial potential for a medical event;
 6. Use of licensed material on humans where such use is not authorized;
 7. Authorization of a release of any individual from licensee's control who does not meet the release criteria in 10 CFR 35.75;
 8. Operation of an irradiator by an individual without supervision, where the individual has not been trained as required by 10 CFR 36.51;
 9. Failure to have and to follow written operating procedures as required by 10 CFR 36.53 that does not result in a substantial potential for a serious injury or death, provided that the failures:
 - (a) Are not isolated,
 - (b) Demonstrate programmatic weaknesses in implementation, and
 - (c) Do not have limited consequences if a medical event is involved;
 10. Programmatic failure to perform inspection and maintenance checks as required by 10 CFR 36.61;
 11. A failure to submit an NRC Form 241, as required by 10 CFR 150.20;

12. A failure to seek required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as:
 - (a) A change in ownership,
 - (b) A change in the location where licensed activities are being conducted, or where licensed material is being stored, or
 - (c) An increase in the quantity or type of radioactive material being processed or used that has radiological significance.
 13. Failure to notify the NRC of a change in Radiation Safety Officer (RSO), but only in those cases in which the NRC subsequently determines that the replacement RSO was unqualified for the position;
 14. Failures involving decommissioning requirements, such as:
 - (a) A significant failure to meet decommissioning as required by regulation or license condition, or
 - (b) Failure to meet required schedules without adequate justification; or
 15. Failure to make an immediate or 24 hour report or notification when required.
- d. *Severity Level IV* Violations involve, for example:
2. Failure to use a properly prepared written directive as required by 10 CFR 35.40; or failure to develop, implement, or maintain procedures for administrations requiring a written directive as required by 10 CFR 35.41, whether or not a medical event occurs, provided that the failures:
 - (a) Are isolated,
 - (b) Do not demonstrate programmatic weaknesses in implementation, and
 - (c) Have limited consequences if a medical event is involved;
 3. A failure to keep the records required by 10 CFR 35.2040 and 35.2041;
 4. Failure to provide or make a report or notification, other than an immediate or 24 hour report or notification, to the NRC, including 15 or 30 day written reports, or failure to include all information required by regulation or license condition in a 15-day or 30-day report;
 5. Failure to implement procedures including, but not limited to, record keeping, surveys, and inventories; or

6. Failure to comply with the Department of Transportation requirement to provide hazardous material (HAZMAT) employee training as required by 10 CFR 71.5(a).

6.4 Licensed Operators

a. *Severity Level I* Violations involve, for example:

1. A licensed operator or a senior operator, actively performing the functions covered by that position, involved in procedural errors that result in, or exacerbate the consequences of, an Alert or higher level emergency, and who, at the time the procedural errors occurred, was:
 - (a) Determined to be unfit for duty as a result of a confirmed positive test for drugs or alcohol at cut-off levels established by the licensee, or
 - (b) Determined to be under the influence of any prescription or over-the-counter drug as described in 10 CFR 55.53(j).

b. *Severity Level II* Violations involve, for example:

1. A licensed operator or a senior operator actively performing the functions covered by that position, involved in procedural errors, who at the time the procedural error occurred, was:
 - (a) Determined to be unfit for duty as a result of a confirmed positive test for drugs or alcohol at cut-off levels established by the licensee, or
 - (b) Determined to be under the influence of any prescription or over-the-counter drug as described in 10 CFR 55.53(j);
2. A deliberate compromise of an application, test, or examination required by 10 CFR Part 55, or inaccurate or incomplete information deliberately provided to the NRC that:
 - (a) In the case of initial operator licensing, contributes to an individual being granted an operator or senior operator license,
 - (b) In the case of requalification, contributes to an individual being permitted to continue to perform the functions of an operator or senior operator, or
 - (c) Contributes to an incorrect restriction being placed on an individual's license;
3. A licensed operator or senior operator who, while within the protected area, is involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages.

c. *Severity Level III* Violations involve, for example:

1. A licensed operator or senior operator actively performing the functions covered by that position, who:
 - (a) Was determined to be unfit for duty as a result of a confirmed positive test for drugs or alcohol at cut-off levels established by the licensee, or
 - (b) Determined to be under the influence of any prescription or over-the-counter drug as described in 10 CFR 55.53(j);
 2. Inattention to duty on the part of a licensed operator or a senior operator actively performing the functions covered by that position;
 3. A licensed operator or senior operator involved in the use, sale, or possession of illegal drugs;
 4. A non-willful compromise of an application, test or examination required by 10 CFR Part 55, or inaccurate or incomplete information inadvertently provided to the NRC that subsequently contributes to the NRC making an incorrect regulatory decision, for example:
 - (a) In the case of initial operator licensing, contributes to an individual being granted an operator or senior operator license,
 - (b) In the case of operator requalification, contributes to an individual being permitted to continue to perform the functions of an operator or senior operator, or
 - (c) Contributes to an incorrect restriction being placed on an individual's license.
- d. *Severity Level IV* Violations involve, for example:
1. Failure to disclose information required for application or reapplication of a 10 CFR Part 55 license that had more than minor significance; or
 2. A licensed operator's confirmed positive test for drugs or alcohol after arriving on-site to perform scheduled work or to attend required requalification training that does not result in a Severity Level I, II, or III violation.

6.5 Facility Construction (Part 50 and 52 Licensees, and Fuel Cycle Facilities)

- a. *Severity Level I* Violations involve, for example:
1. A violation involving multiple structures, systems, or components that are completed⁷ in a manner such that they would not have satisfied their intended safety purpose.

⁷ The term "completed" as used in this supplement means completion of construction, including review and acceptance by the construction Quality Assurance organization.

- b. *Severity Level II* Violations involve, for example:
1. A significant breakdown in the Quality Assurance (QA) program as exemplified by multiple deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). These deficiencies involve the licensee's failure to provide adequate oversight or take prompt corrective action and involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;
 2. A structure, system, or component that is completed in such a manner that it would have an adverse impact on the safety of operations; or
 3. Widespread significant failures of the QA program, involving ineffective oversight, failures of multiple barriers in the licensee's programs, and corrective action measures, affecting multiple structures, systems, or components.
- c. *Severity Level III* Violations involve, for example:
1. A breakdown in a licensee's QA program for construction related to a single work activity (e.g., structural, piping, electrical, foundations). This significant deficiency involves the licensee's failure to consistently provide adequate oversight or take prompt corrective action, and involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;
 2. A failure to confirm the design safety requirements of a structure, system, or component as a result of inadequate pre-operational test program implementation; or
 3. Ineffective corrective actions, resulting in multiple examples of recurring significant deficiencies associated with a single construction activity.
- d. *Severity Level IV* Violations involve, for example:
1. Failure to meet regulatory requirements including one or more QA Criterion that have more than minor safety or environmental significance;
 2. Failure to establish, maintain, and implement adequate controls over quality-related procurement, construction, examination, or testing processes;
 3. An isolated example of a failure to adequately implement QA processes or procedures;
 4. Failure to maintain QA records to demonstrate the adequacy of construction; or
 5. Failure to provide adequate guidance for determining the classification of structures, systems, and components due to deficiencies in the licensee's design control process.

6.6 Emergency Preparedness

Note: These examples are appropriate for violations at operating power reactor facilities for those violations which are dispositioned under traditional enforcement rather than the Reactor Oversight Process (ROP). For operating power reactors, participant performance deficiencies identified in emergency exercises are treated under the ROP. This supplement also provides examples of violations in the area of emergency preparedness at non-power reactor facilities.

a. *Severity Level I* Violations involve, for example:

1. During an actual General Emergency, licensee failure to promptly:

- (a) Correctly classify the event,
- (b) Make required notifications to responsible Federal, State, and local agencies, or
- (c) Respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

b. *Severity Level II* Violations involve, for example:

1. During an actual Site Area Emergency, licensee failure to promptly:

- (a) Correctly classify the event,
- (b) Make required notifications to responsible Federal, State, and local agencies, or
- (c) Respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. Licensee's ability to meet or implement any regulatory requirement related to assessment or notification⁸ is lost such that the function of the requirement would not be implemented during the response to an actual emergency, if one were to occur.

c. *Severity Level III* Violations involve, for example:

1. During an actual Alert emergency, licensee failure to promptly:

- (a) Correctly classify the event,
- (b) Make required notifications to responsible Federal, State, and local agencies, or

⁸ As used in this supplement, "Assessment" includes classification, assessment of the impact of a release of radioactivity, and the making of protective action recommendations; "notification" includes initial and follow-up notifications to offsite response organizations. For power reactors, this includes the risk-significant planning standards 10 CFR 50.47(b)(4), (b)(5), (b)(9), and (b)(10).

- (c) Respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff);
 - 2. Licensee's ability to meet or implement any regulatory requirement related to assessment or notification is degraded such that the effectiveness of the emergency plan has been decreased. Although the regulatory requirement could be implemented during the response to an actual emergency, if one were to occur, the implementation would be degraded (e.g., not fully effective, inappropriately delayed, etc.); or
 - 3. Licensee's ability to meet or implement any regulatory requirement NOT related to assessment or notification is lost such that the function of the regulatory requirement would not be implemented during the response to an actual emergency, if one were to occur.
- d. *Severity Level IV* Violations involve, for example:
- 1. Licensee's ability to meet or implement any regulatory requirement NOT related to assessment or notification is degraded such that the effectiveness of the emergency plan has been decreased. Although the regulatory requirement could be implemented during the response to an actual emergency, if one were to occur, the implementation would be degraded (e.g., not fully effective, inappropriately delayed, etc.).

6.7 Health Physics

Note: Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

- a. *Severity Level I* Violations involve, for example:
- 1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;
 - 2. A radiation exposure during any year of an adult worker in excess of 25 rem (0.25 Sv) total effective dose equivalent, 75 rem (0.75 Sv) to the lens of the eye, or 250 rem (2.5 Sv) to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;
 - 3. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 2.5 rem (0.025 Sv) total effective dose equivalent;
 - 4. A radiation exposure during any year of a minor worker in excess of 2.5 rem (0.025 Sv) total effective dose equivalent, 7.5 rem (0.075 Sv) to the lens of the eye, or 25 rem to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;
 - 5. An annual exposure of a member of the public in excess of 1 rem (0.01 Sv) total

effective dose equivalent;

6. Release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits for members of the public as stated in 10 CFR 20.1302(b)(2)(i); or
7. Disposal of licensed material in quantities or concentrations in excess of 10 times the limits of 10 CFR 20.2003.

b. *Severity Level II* Violations involve, for example:

1. Radiation levels, contamination levels, or releases that exceed 5 times the limits specified in the license;
2. A radiation exposure during any year of an adult worker in excess of 10 rem (0.1 Sv) total effective dose equivalent, 30 rem (0.3 Sv) to the lens of the eye, or 100 rem (1.0 Sv) to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;
3. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem (0.01Sv) total effective dose equivalent;
4. A radiation exposure during any year of a minor worker in excess of 1.0 rem (0.01Sv) total effective dose equivalent; 3.0 rem (0.03Sv) to the lens of the eye, or 10 rem (0.1Sv) to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;
5. An annual exposure of a member of the public in excess of 0.5 rem (5 mSv) total effective dose equivalent;
6. Release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits stated in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem (5 mSv) a year has been approved by the Commission under 10 CFR 20.1301(c));
7. Disposal of licensed material in quantities or concentrations in excess of 5 times the limits of 10 CFR 20.2003; or
8. Failure to make an immediate notification as required by 10 CFR 20.2202(a)(1) or (a)(2).

c. *Severity Level III* Violations involve, for example:

1. A radiation exposure during any year of an adult worker in excess of 5 rem (0.05 Sv) total effective dose equivalent, 15 rem (0.15 Sv) to the lens of the eye, or 50 rem (0.5 Sv) to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;
2. A radiation exposure over the gestation period of the embryo/fetus of a declared

- pregnant woman in excess of 0.5 rem (5 mSv) total effective dose equivalent (except when doses are in accordance with the provisions of 10 CFR 20.1208(d));
3. A radiation exposure during any year of a minor worker in excess of 0.5 rem (5 mSv) total effective dose equivalent; 1.5 rem (0.015 Sv) to the lens of the eye, or 5 rem (0.05 Sv) to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;
 4. An annual exposure of a member of the public in excess of 0.1 rem (1 mSv) total effective dose equivalent (except when operation up to 0.5 rem (5 mSv) a year has been approved by the Commission under 10 CFR 20.1301(c));
 5. A release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem (5 mSv) a year has been approved by the Commission under 10 CFR 20.1301(c));
 6. A substantial potential for exposures or releases in excess of the applicable limits in 10 CFR 20.1001-20.2401 whether or not an exposure or release occurs;
 7. Disposal of licensed material not covered in Severity Levels I or II;
 8. A release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public exceeding the annual dose limits for members of the public;
 9. Conduct of licensee activities by a technically unqualified person;
 10. A violation involving failure to secure, or maintain surveillance over, licensed material that:
 - (a) Involves licensed material in any aggregate quantity greater than 1000 times the quantity specified in Appendix C to 10 CFR Part 20,
 - (b) Involves licensed material in any aggregate quantity greater than 10 times the quantity specified in Appendix C to 10 CFR Part 20, where such failure is accompanied by the absence of a functional program to detect and deter security violations that includes training, staff awareness, detection (including auditing), and corrective action (including disciplinary action), or
 - (c) Results in a substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20; or
 11. A failure to make a 24-hour notification required by 10 CFR 20.2202(b) or an immediate notification required by 10 CFR 20.2201(a)(1)(i);
- d. *Severity Level IV* Violations involve, for example:

1. Intakes in excess of 20.1201(e) or the equivalent for 20.1207;
2. A release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem (5 mSv) a year has been approved by the Commission under 10 CFR 20.1301(c));
3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem (0.02 μ Sv) in any 1 hour (2 millirem/hour) or 50 millirem (0.5 mSv) in a year;
4. A failure to conduct required leakage or contamination tests or to use properly calibrated equipment which does not contribute to an event;
5. Doses to a member of the public in excess of any EPA generally applicable environmental radiation standards, such as 40 CFR Part 190, as required by 10 CFR 20.1301(e);
6. A failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 10 CFR 20.2203(a);
7. Any other matter that has more than a minor safety, health, or environmental significance;
8. A violation involving an isolated failure to secure, or maintain surveillance over, licensed material that involves licensed material in any aggregate quantity greater than 10 times the quantity specified in Appendix C to 10 CFR Part 20, provided that:
 - (a) The material is labeled as radioactive or located in an area posted as containing radioactive materials, and
 - (b) Such failure occurs despite a functional program to detect and deter security violations that includes training, staff awareness, detection (including auditing), and corrective action (including disciplinary action);
9. A failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d).

6.8 Transportation

Note: Some transportation requirements apply to more than one licensee involved in the same activity (e.g., a shipper and a carrier). When such a violation occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

- a. *Severity Level I* Violations involve, for example:
1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that the material caused a radiation exposure to a member of the public and there was clear potential for the public to receive more than 0.1 rem to the whole body;
 2. Surface contamination in excess of 100 times the NRC limit; or
 3. External radiation levels in excess of 25 times the NRC limit.
- b. *Severity Level II* Violations involve, for example:
1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than 0.1 rem to the whole body;
 2. A package breach that results in an exposure of a member of the public in excess of 100 millirem;
 3. Surface contamination in excess of 50 times the NRC limit;
 4. External radiation levels in excess of 5 times the NRC limit; or
 5. A failure to make required initial notifications associated with Severity Level I or II violations.
- c. *Severity Level III* Violations involve, for example:
1. Surface contamination in excess of 5 times the NRC limit;
 2. External radiation in excess of the NRC limit;
 3. Any violation involving labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:
 - (a) A significant failure to identify the type, quantity, or form of material,
 - (b) A failure of the carrier or recipient to exercise adequate controls, or
 - (c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material;
 4. A failure to make required initial notification associated with Severity Level III violations.
- d. *Severity Level IV* Violations involve, for example:

1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding the NRC limits;
2. Surface contamination in excess of the NRC limit;
3. A failure to register as an authorized user of an NRC-Certified Transport package;
4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;
5. A failure to demonstrate that packages for special form radioactive material meet applicable regulatory requirements;
6. A failure to demonstrate that DOT Specifications are met for 7A Type A packages as required by 10 CFR 71.5; or
7. Other violations involving the transportation of licensed materials that have more than minor safety or environmental significance.

6.9 Inaccurate and Incomplete Information And Reporting

a. *Severity Level I* Violations involve, for example:

1. Inaccurate or incomplete information deliberately provided to the NRC, maintained by a licensee or withheld by a licensee, with the knowledge of a licensee official that, had it been complete and accurate, or not withheld, would likely have resulted in regulatory action such as an immediate order required to protect the public health and safety or common defense and security;
2. Failure to make a required report which, had it been submitted, would have resulted in an extremely significant NRC action such as the issuance of an Immediately Effective Order;
3. A knowing and intentional failure to notify the Commission as required by 10 CFR Part 21; or
4. Inaccurate or incomplete information associated with an Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) Notification letter submitted in accordance with 10 CFR 52.99 that
 - (a) Is incomplete or inaccurate because of falsification by or with the knowledge of a licensee or applicant official, or
 - (b) Contains information that had it been accurate and complete, would have resulted in the NRC rejecting closure of an ITAAC and considering an order halting a significant portion of construction activities.

b. *Severity Level II* Violations involve, for example:

1. Inaccurate or incomplete information provided to the NRC, maintained by a licensee or withheld by a licensee with the knowledge of a licensee official, which, had it been complete and accurate, or not withheld, would likely have resulted in regulatory action such as an Immediately Effective Order required to protect the public health and safety or common defense and security;
2. Inaccurate or incomplete information associated with an ITAAC notification letter submitted in accordance with 10 CFR 52.99 that
 - (a) Is incomplete or inaccurate because of deliberate misconduct on the part of a licensee official or licensee personnel, or
 - (b) Contains information that, had it been accurate and complete, would have resulted in the NRC rejecting closure of an ITAAC;
3. Failure to make a required report which, had it been submitted, would have resulted in a very significant NRC action such as the issuance of an Order or immediate dispatch of inspection or investigative resources;
4. A failure to provide the notice required by 10 CFR Part 21; or
5. A failure to make an immediate notification as required by 10 CFR 20.2202 (a)(1) or (a)(2).

c. *Severity Level III* Violations involve, for example:

1. Inaccurate or incomplete information provided to the NRC or maintained by a licensee, or withheld by a licensee that, had it been complete and accurate, or not withheld, would likely have resulted in a reconsideration of a regulatory position or substantial further inquiry;
2. Inaccurate or incomplete information associated with an ITAAC notification letter submitted in accordance with 10 CFR 52.99 that, had it been accurate and complete, would have resulted in reconsideration of a regulatory position or substantial further inquiry by the NRC;
3. Failure to make a required report which, had it been submitted, would have resulted in the consideration of the issuance, for example, of an Order or Confirmatory Action Letter;
4. An inadequate review by a licensee or a licensee contractor, or any failure to review, such that, if an appropriate review had been made as required, a 10 CFR Part 21 report would have been made;
5. Failure to make required notifications and reports pursuant to 10 CFR 50.55(e) report;

6. Failure to make a 24-hour notification required by 10 CFR 20.2202(b) or an immediate notification required by 10 CFR 20.2201(a)(1)(i); or
7. Failure to make any report required by Part 73, Section 73.71 or Appendix G, or Part 26 except for 10 CFR 26.719(d).

d. *Severity Level IV* Violations involve, for example:

1. Inaccurate or incomplete information provided to the NRC or maintained by a licensee or withheld by a licensee that was of more than minor significance;
2. Failure to make a required report which, had it been submitted, would have resulted in, for instance, increasing the inspection scope of the next regularly scheduled inspection;
3. Information associated with an ITAAC notification letter submitted in accordance with 10 CFR 52.99 that was correct at the time of submission but later deemed inaccurate due to (a) damage caused by subsequent inadequately controlled construction activities, or (b) subsequently developed new information. Additionally, the licensee did not make timely and effective notification to the NRC upon discovery;
4. An inadequate review or failure to review under 10 CFR Part 21 or other procedural violations associated with 10 CFR Part 21 with more than minor safety significance;
5. Failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206;
6. Failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d);
7. Failure to report indicators of programmatic weaknesses as required in 10 CFR 26.719(d); or
8. Failure to make a required written event report, as required by 10 CFR 76.120(d)(2), Appendix A of 10 CFR Part 70, or 10 CFR 70.50(c)(1).

6.10 Discrimination

Note: In certain cases, the severity level of a violation may be escalated based on unique escalating factor(s) such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated. Conversely, the severity level of a violation of an NRC employee protection regulation may be mitigated to a lower severity level based on factor(s) unique to the specific facts and circumstances of the case.

a. *Severity Level I* violations involve, for example:

1. An executive level corporate manager (or equivalent) (which for this definition includes a Site Vice President) is the decision-maker or plays a significant role in the adverse action decision-making process regardless of the severity of the adverse action but with at least one of the following escalating factors:
 - (a) The adverse action against the employee had a wide spread site impact on other employees' willingness to raise concerns, or
 - (b) The employer failed to take meaningful action to investigate and address the allegation of discrimination, if such allegation was first raised internally within the employer's processes addressing employee concerns;
2. A mid or a senior level plant manager (or equivalent) or a corporate level line manager (or equivalent) is the decision-maker or plays a significant role in the adverse action decision-making process; the employment action is of the nature that is relatively more adverse to the employee's terms, conditions, compensation or privileges of employment such as suspension without pay, as an example; and either a.1 (a) or (b) above is cited or other unique factor(s).

b. *Severity Level II* violations involve, for example:

1. An executive level corporate manager (or equivalent) (which for this definition includes a Site Vice President) is the decision-maker or plays a significant role in the adverse action decision-making process regardless of the severity of the adverse action but without an escalating factor present;
2. A mid or senior level plant manager (or equivalent) or a corporate level line manager (or equivalent) is the decision-maker or plays a significant role in the adverse action decision-making process; the employment action is of the nature that is relatively more adverse to the employee's terms, conditions, compensation or privileges of employment such as suspension without pay, as an example; and there is no escalating factor present;
3. A mid or senior level plant manager (or equivalent) or a corporate level line manager (or equivalent) is the decision-maker or plays a significant role in the adverse action decision-making process; the employment action is of the nature that is relatively less adverse to the employee's terms, conditions, compensation or privileges of employment such as a verbal counseling, as an example; and either a.1 (a) or (b) above is cited or other unique escalating factor(s) present; or
4. A lower level plant manager (or equivalent) or supervisor (or equivalent) is the decision-maker or plays a significant role in the adverse action decision-making process; the employment action is of the nature that is relatively more adverse to the employee's terms, conditions, compensation or privileges of employment such as suspension without pay, as an example; and either a.1 (a) or (b) above is cited or other unique escalating factor(s) present.

c. *Severity Level III* violations involve, for example:

1. A mid or senior level plant manager (or equivalent) or a corporate level line manager (or equivalent) is the decision-maker or plays a significant role in the adverse action decision-making process; the employment action is of the nature that is relatively less adverse to the employee's terms, conditions, compensation or privileges of employment such as a verbal counseling, as an example; and there is no escalating factor present;
2. A lower level plant manager (or equivalent) or supervisor (or equivalent) is the decision-maker or plays a significant role in the adverse action decision-making process; the employment action is of the nature that is relatively more adverse to the employee's terms, conditions, compensation or privileges of employment such as suspension without pay, as an example; and there is no escalating factor present; or
3. A lower level plant manager (or equivalent) or supervisor (or equivalent) is the decision-maker or plays a significant role in the adverse action decision-making process; the employment action is of the nature that is relatively less adverse to the employee's terms, conditions, compensation or privileges of employment such as a verbal counseling, as an example; and either a.1 (a) or (b) above is cited or other unique escalating factor(s) present.

d. *Severity Level IV* violations involve, for example:

1. A lower level plant manager (or equivalent) or supervisor (or equivalent) is the decision-maker or plays a significant role in the adverse action decision-making process; the employment action is of the nature that is relatively less adverse to the employee's terms, conditions, compensation or privileges of employment such as a verbal counseling, as an example; and there is no escalating factor present.

6.11 Reactor and Fuel Facility Security

a. *Severity Level I* Violations involve, for example:

1. The theft, diversion, or act of sabotage involving a formula quantity of special nuclear material (SNM), or a very significant quantity of other radioactive material; or
2. Any failure of the licensee's security program or Insider Mitigation Program resulting in an act of sabotage against one or more target sets or target set elements.

b. *Severity Level II* Violations involve, for example:

1. An act of radiological sabotage that results in the loss or destruction of a quantity of radioactive material determined significant by the NRC;
2. The theft or diversion of a quantity of SNM of moderate strategic significance or

- quantity of other radioactive material determined significant by the NRC, in which one or more attributes of the security program did not function as required;
3. Failure to take reasonable action when observed behavior within the protected area or credible information concerning the activities of an individual indicates possible unfitness for duty based on drug or alcohol use;
 4. Failure of a licensee to involve the licensee's reviewing official in developing an unescorted access authorization determination or determination of fitness, following a for-cause action by a licensee that results in an individual's voluntary or involuntary loss of employment; or
 5. Failure to maintain high assurance that the licensee protective strategy and Insider Mitigation Program functions as required.
- c. *Severity Level III* Violations involve, for example:
1. Any attempted act of radiological sabotage to any radiological material by an insider (e.g., licensee employee, licensee contractor or subcontractor);
 2. A failure of the security or insider mitigation program, not amounting to a Severity Level I or II violation that challenges the high assurance standard of 10 CFR 73.20 or 10 CFR 73.55;
 3. Failure to develop and maintain records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied unescorted access or unescorted access authorization, was improperly granted such access;
 4. Failure to assure that a licensee approved contractor or vendor access authorization program is operating in accordance with regulatory and licensee requirements;
 5. Failure to complete more than one of the requirements of an access authorization program prior to granting an individual unescorted access, or unescorted access authorization;
 6. Assigning an individual to a job task related to implementing the licensee's protective strategy without the person being qualified in accordance with regulatory requirements;
 7. Any deliberate falsification of information relied upon by a reviewing official to make an unescorted access or unescorted access authorization determination;
 8. A significant failure of the safeguards or security systems designed or used to prevent, detect, or assess the theft, loss, or diversion of strategic SNM, or significant quantities of other radioactive material; or
 9. 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.

d. *Severity Level IV* Violations involve, for example:

1. A failure of the licensee security or insider mitigation program resulting in an attempted act of radiological sabotage against one or more target set elements;
2. A loss of SNM of low strategic significance or less significant quantities of other radioactive material, that was not detected within the time period specified in the security plan, other relevant document, or regulation; or
3. Violations of requirements contained in the licensee security plan and implementing procedures not amounting to a SEVERITY LEVEL I, II or III violation.

6.12 Materials Security

a. *Severity Level I* Violations involve, for example:

1. The theft, diversion, or sabotage of a Category 1 quantity of radioactive material resulting from the failure to establish or implement one or more requirements, such as:
 - (a) Failure to control access to a Category 1 quantity of radioactive material to only individuals deemed trustworthy and reliable and having job duties that require unescorted access to the radioactive material;
 - (b) Failure to immediately respond to an attempted theft, sabotage, or diversion of a Category 1 quantity of radioactive material, including requesting assistance from the local law enforcement agency;
 - (c) Failure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material; or
 - (d) Failure to implement the Radioactive Material Quantities of Concern (RAM QC) requirements prior to shipping a consignment containing a Category 1 quantity of radioactive material.

b. *Severity Level II* Violations involve, for example:

1. The theft, diversion, or sabotage of a Category 2 quantity of radioactive material resulting from the failure to establish or implement one or more increased controls requirements, such as:
 - (a) Failure to control access to a Category 1 or Category 2 quantity of radioactive material to only individuals deemed trustworthy and reliable and having job duties that require unescorted access to the radioactive material;

- (b) Failure to immediately respond to an attempted theft, sabotage, or diversion of a Category 1 or Category 2 quantity of radioactive material including requesting assistance from the local law enforcement agency;
- (c) Shipping a consignment of a Category 2 quantity of radioactive material by a carrier, other than the licensee, without first verifying that the carrier uses a package tracking system, implements methods to assure trustworthiness and reliability of drivers, maintains constant control and/or surveillance during transit, and has the capability for immediate communication to summon appropriate response or assistance;
- (d) Failure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material;
- (e) Failure to implement the RAM QC ASM prior to shipping a consignment containing a Category 1 quantity of radioactive material; or
- (f) Failure to utilize a method to disable a vehicle or trailer, in or on which a Category 1 or Category 2 quantity of radioactive material is stored, when not under direct control and constant surveillance by the licensee.

c. *Severity Level III* Violations involve, for example:

1. Failure to immediately respond to an attempted theft, sabotage, or diversion of a Category 1 or Category 2 quantity of radioactive material, including a failure to request assistance from the local law enforcement agency, that does not result in actual theft, sabotage, or diversion of radioactive material;
2. Failure to determine trustworthiness and reliability of individuals having unescorted access to radioactive material quantities of concern and devices;
3. Failure to limit access to physical protection information to only those persons with an established need-to-know, and who were determined to be trustworthy and reliable;
4. Failure to verify that a carrier uses package tracking systems, implements methods that assure trustworthiness and reliability of drivers, maintains constant control and/or surveillance during transit, and has the capability for immediate communication to summon appropriate response or assistance, prior to shipping a Category 2 quantity of radioactive material, per consignment, by the carrier;
5. Failure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material;
6. Failure to initiate an investigation to determine the location of a shipment of licensed material containing a Category 2 quantity of radioactive material when the shipment does not arrive on or about the expected arrival time;

7. Failure to notify the NRC Operations Center promptly after initiating a response to any actual or attempted theft, diversion, or sabotage of sources or devices containing a Category 1 or Category 2 quantity of radioactive material;
 8. Failure to implement the RAM QC prior to shipping a Category 1 quantity of radioactive material, per consignment;
 9. Failure to utilize a method to disable a vehicle or trailer, in or on which a Category 1 or Category 2 quantity of radioactive material is stored, when not under direct control and constant surveillance by the licensee;
 10. Failure to establish or programmatic failure to implement a pre-arranged response plan with the local law enforcement agency;
 11. Failure to establish or programmatic failure to implement a program to monitor and immediately detect, assess, and respond to unauthorized access to a Category 1 or Category 2 quantity of radioactive material; or
 12. Failure to have a dependable means to transmit information between, and among, the various components of the intrusion detection system or to summon the appropriate responder.
- d. *Severity Level IV* Violations involve, for example:
1. Failure to document the basis for concluding that an individual was determined to be trustworthy and reliable for the purposes of granting unescorted access to a Category 1 or Category 2 quantity of radioactive material;
 2. Failure to perform a complete and adequate trustworthiness and reliability determination for an individual such that information relevant to access approval was not obtained or considered, but the individual would likely have been granted unescorted access if the required information had been obtained or considered;
 3. Failure to limit approval for unescorted access with respect to Category 1 or Category 2 quantity of radioactive material to individuals with job duties requiring unescorted access;
 4. Failure to maintain a list of persons approved for unescorted access;
 5. Failure to confirm receipt of transferred radioactive material;
 6. Failure to document the pre-arranged plan with the local law enforcement agency or update the pre-arranged plan when changes to the facility design or operation affect the potential vulnerability of sources;
 7. Isolated failure of the dependable means to transmit information between, and among, the various components of the intrusion detection system or to summon the

appropriate responder, to operate as designed;

8. Failure to contact the recipient or originator of a shipment to coordinate an expected arrival time for a shipment of a Category 2 quantity of radioactive material;
9. Isolated failure to implement a portion of the licensee's program to monitor and immediately detect, assess, and respond to unauthorized access to a Category 1 or Category 2 quantity of licensed radioactive material, such that an opportunity exists that could allow unauthorized and undetected access to the material, but that was neither easily or likely to be exploitable;
10. Isolated failure to limit access to physical protection information to only those persons with an established need-to-know and who are considered to be trustworthy and reliable, where with a high degree of confidence it is unlikely that the information could be used by an unauthorized individual who represents a predictable threat to circumvent or defeat the licensee's physical protection program;
11. Failure to comply with an element of the licensee's procedure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material that does not seriously degrade the enhanced monitoring capability; or
12. Other violations involving materials safety that have more than minor safety or security significance.

6.13 Information Security

a. *Severity Level I* Violations involve, for example:

1. Failure to control TOP SECRET or SECRET matter where the matter was removed from a controlled area by, or disclosed to, an unauthorized person.

b. *Severity Level II* Violations involve, for example:

1. Failure to control TOP SECRET or SECRET matter where the matter was removed from a controlled area and could have been disclosed to an unauthorized person; or
2. Failure to control classified matter not amounting to TOP SECRET or SECRET classified matter, or Safeguards Information where the matter or information was removed from a controlled area and was disclosed to an unauthorized person.

c. *Severity Level III* Violations involve, for example:

1. Failure to control classified matter or Safeguards Information where there was the substantial potential that the matter or information could have been removed by or disclosed to an unauthorized person; or
2. A failure to protect, control or mark classified matter or Safeguards Information while

the matter or information is outside the protected area and accessible to those not authorized access to the protected area.

d. *Severity Level IV* Violations involve, for example:

1. A failure to properly secure, protect or mark classified matter or Safeguards Information inside the protected area that could assist an individual in an act of radiological sabotage or theft of strategic SNM where the matter or information was not removed from the protected area.

6.14 Fitness For Duty⁹

a. *Severity Level I* Violations involve, for example:

1. Failure to implement or maintain reasonable assurance of Fitness for Duty program performance in two or more Subparts of 10 CFR Part 26; or
2. Failure to substantially implement a licensee Employee Assistance Program (EAP).

b. *Severity Level II* Violations involve, for example:

1. Failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area, or take action for an on-duty misuse of alcohol, illegal drugs, prescription drugs, or over-the-counter medications;
2. Failure to take an action required by regulation or the licensee behavior observation program when observed behavior within the protected area or credible information concerning the activities of an individual indicates possible unfitness for duty based on drug or alcohol use;
3. A deliberate failure of the licensee's EAP staff to notify licensee management when the EAP staff is aware that an individual's condition may adversely affect the safety or security of the facility; or
4. Failure to effectively implement more than one of the requirements of 10 CFR 26, Subpart I.

c. *Severity Level III* Violations involve, for example:

1. Failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;
2. Failure to assure that a licensee approved contractor or vendor approved Fitness for Duty program is operating in accordance with regulatory and licensee requirements;

⁹ See supplement 6.4 for fitness for duty violation examples specific to licensed operators.

3. Failure to complete or maintain more than one of the requirements of a Fitness for Duty program for individuals listed in 10 CFR 26.4;
 4. Failure to develop and maintain records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied Fitness for Duty authorization was improperly granted such access; or
 5. Failure to effectively implement any single attribute (e.g., work hours, waivers, self-declarations or fatigue assessments) of the requirements of 10 CFR 26, Subpart I, not amounting to a severity level I or II violation.
- d. *Severity Level IV* Violations involve, for example:
1. Failure to have implementing procedures that are clear, concise and readily available;
 2. Failure to take an action required by the licensee behavior observation program not amounting to a severity level I, II or III violation; or
 3. A violation of the requirements of Part 26, unrelated to the behavior observation program and not amounting to a SEVERITY LEVEL I, II or III violation.

7.0 **GLOSSARY OF TERMS**

This glossary, while not exhaustive, contains many of the terms commonly used throughout the NRC enforcement process. Several terms or words have been included in this glossary to ensure that the user is aware that under some circumstances, the ordinary meaning attributed to a word may be appropriate while under other circumstances, the same word may be a “word of art.” Use of the term “safety significance” is an example. Under the Reactor Oversight Process, the term “safety significance” when used to qualify an object, such as a system, structure, component, accident sequence, or cut set, identifies that object as having an impact on safety, whether determined through risk analysis or other means that exceeds a predetermined significance criterion. However, “safety significance” is also used to describe the impact or potential impact a violation had on the public health and safety.

Activity Area refers to the area of NRC-licensed activity that a licensee (or other person) engages in, e.g., radiography, reactor operations, etc.

Actual Consequences include actual onsite or offsite releases of radiation, onsite or offsite radiation exposures, accidental criticality, core damage, loss of significant safety barriers, loss of control of radioactive material, etc.

Alternative Dispute Resolution (ADR) refers to a variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures. Mediation and arbitration are the most widely recognized processes. The NRC’s ADR program uses mediation rather than arbitration, i.e., the parties develop mutually agreeable corrective

actions rather than being obligated by an arbitrator's decision.

Apparent Violation refers to an issue that is being considered for enforcement action.

Careless Disregard refers to situations in which an individual acts with reckless indifference to at least one of three things: (1) the existence of a requirement, (2) the meaning of a requirement, or (3) the applicability of a requirement. Careless disregard occurs when an individual is unsure of: whether there is a requirement, the meaning of a requirement, or whether the requirement is applicable to the situation, but proceeds to engage in conduct that the individual knows might cause a violation. The individual is aware that to proceed might cause a violation, but proceeds without first ascertaining whether a violation would occur.

Civil Penalty is a monetary penalty that may be imposed for violations of (1) certain specified licensing provisions of the AEA or supplementary NRC rules or orders; (2) any requirements for which a license may be revoked; or (3) reporting requirements under section 206 of the ERA.

Confirmatory Action Letter (CAL) is a letter confirming a licensee's or contractor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

Confirmatory Order is an order which confirms the commitments made by a licensee or individual to take certain actions. The terms of the confirmatory order are mutually agreed upon by the licensee or individual and the NRC prior to issuance.

Contractor as used in this policy includes vendors who supply products or services to be used in an NRC-licensed facility or activity.

Corrective Action Program (CAP) is a licensee's process for tracking, evaluating, and resolving deficiencies.

Deliberate Misconduct occurs when an individual voluntarily and intentionally: (1) engages in conduct which the individual knows to be contrary to a requirement, procedure, instruction, contract, purchase order or policy of a licensee, applicant for a license, or a contractor or subcontractor of a licensee or applicant for a license; or (2) provides materially inaccurate or incomplete information to a licensee, applicant for a license, or a contractor or subcontractor of a licensee or applicant for a license.

Demand for Information (DFI), as defined in 10 CFR 2.204, is an Order requiring a licensee or other person subject to the jurisdiction of the Commission to respond with specific information for the purpose of enabling the NRC to determine whether an order should be issued or whether other action should be taken.

Discrimination, as described in 10 CFR 50.7 (or similar provisions in 10 CFR Parts 30, 40, 52, 60, 61, 63, 70, 71, 72, and 76.) is an act against an employee that includes discharge and other adverse actions that relate to compensation, terms, conditions, or privileges of employment in retaliation for engaging in certain protected activities.

Escalated Enforcement Actions include Severity Level I, II, and III NOVs, NOVs associated

with an inspection finding that the SDP evaluates as having low to moderate (White), or greater safety significance, civil penalties, NOVs to individuals, orders to modify, suspend, or revoke NRC licenses or the authority to engage in NRC-licensed activities, and orders issued to impose civil penalties.

Event, as used in this policy, means (1) an occurrence characterized by an active adverse impact on equipment or personnel, readily obvious by human observation or instrumentation, or (2) a radiological impact on personnel or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above NRC limits, or a loss of radioactive material. For example, an equipment failure discovered through a spill of liquid, a loud noise, the failure to have a system respond properly, or an annunciator alarm would be considered an event; a system discovered to be inoperable through a document review would not. Similarly, if a licensee discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

Fuel Cycle is the series of steps involved in supplying fuel for nuclear power reactors. It can include mining, milling, isotopic enrichment, fabrication of fuel elements, use in a reactor, chemical reprocessing to recover the fissionable material remaining in the spent fuel, reenrichment of the fuel material, refabrication into new fuel elements, and waste disposal.

Impacts the NRC's Ability to Perform Its Regulatory Function is a situation which prevents the NRC from using appropriate regulatory tools to address a noncompliance because the agency is unaware that the noncompliance exists, e.g., providing inaccurate and incomplete information or failing to submit a required report.

Individual, as used in this policy, is any person licensed by the NRC such as a reactor operator licensed under 10 CFR Part 55; or any person applying for an NRC license; or any person working for an NRC licensee or applicant; or any contractor of a licensee or applicant.. Such individuals are subject to NRC jurisdiction.

License Applicant as used in this statement of policy means any person who submits an application for review.

Licensee is any person or entity licensed by the NRC.

Licensee Official as used in this statement of policy means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, the NRC will consider the individual's responsibilities relative to the oversight of licensed activities and the use of licensed material.

Lost Source Policy is the policy of the NRC to normally issue a civil penalty of at least the base civil penalty amount in the case where regulated material is out of the control of the licensee for any period of time regardless of the use, license type, quantity, or type of radioactive material (examples include loss, abandonment, improper transfer, or disposal of regulated material) Violations associated with this quantity of material normally result in

escalated enforcement actions.

Minor Violation is a violation that is less safety-significant than a Severity Level IV violation or less significant than a Green SDP finding. Minor violations and minor SDP findings do not warrant enforcement action and are not normally documented in inspection reports. However, minor violations must be corrected. SDP findings that are determined to be minor are not assigned a color.

Non-cited Violation (NCV) is a non-recurring, typically, non-willful, Severity Level IV violation that is not subject to formal enforcement action if, for a reactor licensee, the licensee places the violation in a corrective action program to address recurrence and restores compliance within a reasonable period of time and, for all other licensees, the licensee corrects or commits to correct the violation within a reasonable period of time.

Non-Escalated Enforcement Actions include NOVs that are disposition by NRC as Severity Level IV or minor violations.

Notice of Deviation (NOD) is a written notice describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A NOD requests that a licensee provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

Notice of Nonconformance (NON) is a written notice describing a licensee's contractor's failure to meet commitments which have not been made legally binding requirements by NRC, e.g., a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. [If the contractor deliberately fails to meet the terms of a procurement contract, a violation may be issued under the Deliberate Misconduct Rule, i.e., 10 CFR 50.5.] NONs request that non-licensees provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

Notice of Violation (NOV) is a written notice setting forth one or more violations of a legally binding requirement (see [10 CFR 2.201](#)).

Order is used to modify, suspend, or revoke a license, or for taking other action against a licensee or other person subject to the jurisdiction of the Commission (see [10 CFR 2.202](#)).

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.

Predecisional Enforcement Conference (PEC) may be conducted with a licensee or individual before the NRC makes an enforcement decision when escalated enforcement action appears to be warranted (i.e., Severity Level I, II, or III violations, civil penalties or orders). The purpose of a PEC is to obtain information that will assist the NRC in determining the appropriate enforcement action.

Regulatory Conference is conducted with a reactor licensee to discuss the significance of findings evaluated through the Significance Determination Process (SDP) with or without associated violations. The focus of such meetings is on the safety significance of the issues and not necessarily on the corrective actions associated with the issues. Because the significance assessment from the SDP determines whether or not escalated enforcement action will be issued, a subsequent predecisional enforcement conference is not normally necessary.

Requirement as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

Repetitive Violation is a violation which could reasonably be expected to have been prevented by a licensee's corrective action for the same, or similar, previous violation or a previous licensee finding that occurred within the past two years of the current violation, or that occurred within the period covered by the last two inspections, whichever is longer.

Risk Information is used wherever possible to develop realistic and credible scenarios to use when assessing the safety-significance of a violation and assigning severity levels.

Severity Levels are used (1) to indicate significance of a violation assessed under conventional enforcement; and (2) to determine the appropriate enforcement action to be taken.

Significance as used in this policy for violations that do not involve application of the ROP, describes the seriousness of the violation. The significance of violations assessed under the ROP is determined by the Significance Determination Process (SDP), described in IMC 0609 and related documents.

Substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20 describes a situation where it was fortuitous that the resulting exposure or release did not exceed the limits of 10 CFR Part 20. The concern is not the significance of the resulting or potential exposure, but whether the licensee provided adequate controls over the situation, as required, to prevent exceedance of the 10 CFR Part 20 limits.

Tangible Adverse Action has an actual, negative effect on an employee. Factors include, but are not limited to: (1) a monetary effect (e.g., failure to receive a routine annual pay increase or bonus); (2) demotion or arbitrary downgrade of a position; (3) transfer to a position that is recognized to have a lesser status (e.g., from a supervisory to non-supervisory position); (4) loss of promotion; and (5) overall performance appraisal downgrade. Examples of a significant, tangible adverse action include: termination, or substantial monetary action, such as denied promotion.

Traditional Enforcement as used in this Policy refers to the process to disposition violations of NRC requirements that cannot be dispositioned through the reactor oversight process SDP. Violations that are typically dispositioned using "traditional enforcement" are those involving: (1) actual consequences, (2) willfulness/wrongdoing, (3) impeding the regulatory process, (4) discrimination, (5) non-color [non-SDP] inspection findings (i.e., a violation of NRC requirements for which there is not an associated SDP performance deficiency), (6) materials regulations, and (7) violations committed by individuals.

Violation is the failure to comply with a requirement.

Willful violations involve either deliberate intent to violate requirements or to falsify information, or careless disregard violation of requirements or for the completeness and accuracy of information provided.

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8.0 TABLE OF BASE CIVIL PENALTIES

TABLE A

a.	Power reactors, gaseous diffusion plants, and High Level Waste Repository	\$140,000
b.	Fuel fabricators authorized to possess Category I or II quantities of SNM	\$70,000
c.	Fuel fabricators authorized to possess Category III quantities of SNM, industrial processors, ¹ independent spent fuel and monitored retrievable storage installations, mills and uranium conversion facilities, and gas centrifuge uranium enrichment facilities	\$35,000
d.	Test reactors, contractors, waste disposal licensees, industrial radiographers, and other large material users	\$14,000
e.	Research reactors, academic, medical, or other small material users ²	\$7,000
f.	Loss, abandonment, or improper transfer or disposal of regulated material, regardless of the use or type of licensee: ³	
	1. Sources or devices with a total activity greater than 3.7×10^4 MBq (1 Curie), excluding hydrogen-3 (tritium)	\$54,000
	2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i).....	\$17,000
	3. Sources and devices not otherwise described above	\$7,000

¹Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

²This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

³These base civil penalty amounts have been determined to be approximately three times the average cost of disposal. For specific cases, NRC may adjust these amounts to correspond to three times the actual expected cost of authorized disposal.

TABLE B

Severity Level	Base Civil Penalty Amount (Percent of amount listed in Table A)
I	100%
II.....	80%
III.....	50%