

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

EXTENSION

DESCRIPTION OF THE INFORMATION COLLECTION

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

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

A licensee or certificate holder seeking the issuance of a NOED, must document the safety basis for the request, including: an evaluation of the safety significance and potential consequences of the proposed request, a description of proposed compensatory measures, a justification for the duration of the request, the basis for the licensee's or certificate holder's conclusion that the request does not have a potential adverse impact on the public health and safety, that there will be no adverse consequences to the environment, and any other information the NRC staff deems necessary before the NRC staff makes a decision whether to exercise discretion.

In addition, NRC's Enforcement Policy includes a provision allowing licensees to voluntarily adopt fire protection requirements contained in the National Fire Protection Association Standard 805, "Performance-Based Standard for Fire Protection for Light-Water Reactor Electric Generating Plants, 2001 Edition" (NFPA 805). Licensees who wish to implement the risk-informed process in NFPA 805 must submit a letter of intent (LOI) to the NRC. Licensees who wish to withdraw from the NFPA 805 risk-informed process must submit a letter of retraction. These information collections were approved at the Proposed Rule stage by OMB on February 13, 2003, and the final rule (10 CFR 50.48(c)) was published in the *Federal Register* on June 16, 2004 (69 FR 33536).

A. JUSTIFICATION

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

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

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

The NRC needs the letters of intent from licensees who wish to implement the risk-informed process in NFPA 805 to indicate when the licensee's three years of enforcement discretion begins. The enforcement discretion period would begin upon receipt of a letter of intent from the licensee stating their intention to adopt the risk informed, performance-based fire protection program under 10 CFR 50.48(c) and providing a schedule for the transition to 10 CFR 50.48(c).

The enforcement discretion period would be in effect for up to three years under the letter of intent and, if the licensee submits a license amendment request to complete the transition to 10 CFR 50.48(c), will continue until the NRC approval of the license amendment request is completed. 10 CFR 50.90 requires the application for amendment of the license or construction permit to be filed with the Commission, fully describing the changes and following as far as applicable in the form prescribed for original applications.

If the licensee decides not to complete its transition to 10 CFR 50.48(c), the licensee must submit a letter stating their intention to retain their existing license basis and withdrawing their letter of intent. Enforcement discretion would be provided for those violations that were identified under the letter of intent to transition to NFPA 805 provided those violations are resolved under the existing licensing basis and meet the criteria included in this policy for these violations. Violations identified after the date of the withdrawal letter will be dispositioned in accordance with normal enforcement practices.

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

The impact of this information collection on each licensee or certificate holder is inconsequential in comparison with the alternative: follow license or certificate conditions, cease power operations, and either shut down the plant; perform testing, inspection, or system realignment that is inappropriate for the specific plant conditions; or delay plant startup.

Requesting that the NRC staff exercise enforcement discretion is strictly a voluntary option for all licensees and certificate holders. In consideration of a licensee's desire to implement NFPA 805, submitting a LOI starts the period of enforcement discretion if the NRC grants the NOED.

2. Agency Use of Information

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

For an operating nuclear power plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant shutdowns. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by avoiding testing, inspection, or system realignment that is inappropriate for the particular plant condition. Exercising enforcement discretion for plants attempting to start up is less likely than exercising it for an operating plant, as delaying startup does not usually leave the plant in a condition in which it could experience undesirable conditions.

In such cases, the NRC would expect that discretion would be exercised with respect to equipment or systems only when it has concluded that: (1) the equipment or system does not perform a safety function in the mode in which the operation is to occur; or (2) remaining in the current mode increases the likelihood of an unnecessary plant condition; or (3) the TS or license condition requires a test, inspection, or system realignment that is inappropriate for the particular plant condition.

For those operating nuclear power plants intending to transition to a risk-informed, performance-based fire protection program under 10 CFR 50.48(c), the NRC needs the letters of intent to indicate when the licensee's three years of enforcement discretion begins. The enforcement discretion period would begin upon receipt of a letter of intent from the licensee stating their intention to adopt the risk informed, performance-based fire protection program under 10 CFR 50.48(c) and providing a schedule for the transition to 10 CFR 50.48(c). The application for amendment of the license enables the staff to evaluate any changes made at the facility or any new information concerning the facility that may potentially affect the safety of the facility and consequently the health and safety of the public. NFPA 805 enforcement discretion is provided to allow licensees to conduct in-depth risk analysis that results in: a better understanding of the plant fire risk and an appropriate application of fire protection.

For a GDP, this exercise of enforcement discretion is expected to be extremely rare, but is intended to minimize the potential safety, safeguards, or security consequences of unnecessary plant conditions with the accompanying operational risks and impacts; or to eliminate testing, inspection, or system realignment that is inappropriate for the particular plant conditions. In such cases, the NRC would expect that discretion would be exercised with respect to equipment or systems when it has concluded that: (1) the equipment or system does not perform a safety function in the mode in which operation is to occur; or (2) the safety function performed by the equipment or system is of only marginal safety benefit, and remaining in the current mode increases the likelihood of an unnecessary plant condition; or (3) the Technical Requirements Manual (TRM) Surveillance Requirement (TSR) or certificate condition requires a test, inspection, or system realignment that is inappropriate for the particular plant condition.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. The NRC encourages respondents to use information technology when it would be beneficial to them. The NRC issued a regulation on October 10, 2003 (68 FR 58791), consistent with the Government Paperwork Elimination Act, which allows its licensees, vendors, applicants, and members of the public the option to make submissions electronically via CD-ROM, e-mail, special Web-based interface, or other means. NFPA 805 LOIs will be filed electronically, however, because of the types of information and the infrequency of submissions; NOED requests do not readily lend themselves to the use of information technology collection techniques for submission. It is estimated that for this information collection approximately 10% of the information will be filed electronically.

4. Effort to Identify Duplication and Use Similar Information

No sources of similar information are available to the NRC. There is no duplication of requirements. NRC has in place an ongoing program to examine all information collections with the goal of eliminating all duplication and/or unnecessary information collections.

This information is only necessary when a licensee or certificate holder seeks the issuance of a NOED or plans to transition to 10 CFR 50.48(c). There is no other time the relevant information is required to be submitted; and there is no source for the information other than licensee or certificate holder.

5. Effort to Reduce Small Business Burden

Not applicable.

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

This action is strictly voluntary and information is required only upon the licensee's or certificate holder's request for enforcement discretion. The NRC needs the letters of intent to indicate when the licensee's three years of enforcement discretion begins. The enforcement discretion period would begin upon receipt of a letter of intent from the licensee stating their intention to adopt the risk informed, performance-based fire protection program under 10 CFR 50.48(c) and providing a schedule for the transition to 10 CFR 50.48(c).

7. Circumstances Which Justify Variation from OMB Guidelines

This action does not vary from OMB guidelines.

8. Consultations Outside the NRC

Opportunity for public comment on the information collection requirements for this clearance package has been published in the Federal Register.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b).

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

11. Justification for Sensitive Questions

Not applicable.

12. Estimated Burden and Burden Hour Cost

The estimated number of annual NOEDs is based on a review of past NOED data. NOED data for nuclear power plant licensees since 2000 was reviewed and it was determined that since 2000, there have been 135 NOEDs. Of these 135 NOEDs, 44 were for one specific licensee and concerned a plant operator licensing issue and are considered extraordinary. Removing these 44, the total NOEDs over the last 10 years is 91, which results in an average of 9.1 NOEDs per year. There has been one NOED issued in 2010 for a GDP certificate holder. As such, an estimate of 10 NOEDs per year for the next three years was used.

In regards to the LOIs from licensees who wish to implement the risk-informed process in NFPA 805, since 2005, 15 licensees have submitted LOIs, which averages to three submittals per year. However, at the present time, we have no indication that any new licensees will be submitting a letter of intent to transition to 10 CFR 50.48(c). The remaining licensees that have not elected to file a letter of intent may at any time decide that the performance-based program may be desirable. There is reason to believe that once the process has been successfully demonstrated through the completion of the first group of non-pilot applications, more licensees may decide to file a letter of intent. Given this and the number of remaining licensees that could submit an LOI, it is estimated that 1 LOI annually could be submitted during this clearance period. The NRC does not expect to receive any letters of retraction.

The burden estimate per NOED request is 150 hours; and the annual burden is 1,500 hours (10 licensees/certificate holders x 150 hours per request = 1,500 hours).

In addition, the NRC expects to receive 1 LOI to implement NFPA 805 annually. The burden estimate to process a NOED in support of the NFPA 805 LOI per request is 40 hours; the annual burden is 40 hours (1 LOI x 40 hours per request = 40).

The total estimated annual reporting burden is 1,540 hours (1,500 hours + 40 hours for NFPA 805 NOEDs = 1,540 hours).

As a result of requesting a NOED, there is an implied recordkeeping burden. This recordkeeping burden is estimated at 165 hours (16.45 hours per recordkeeper) for maintaining a copy for the licensees' records. It is also anticipated that most licensees will maintain a copy for their records.

The total annual burden is 1,705 hours. The total cost at \$259 an hour is \$441,595 (1,705 hours x \$259 per hour = \$441,595).

Total Burden/Cost: 1,705 hours (1,540 hrs reporting + approximately 165 hrs recordkeeping)

Total Respondents: 11 (10 licensees requesting NOEDs and 1 licensee submitting NFPA 805 LOIs requiring a NOED)

Total Responses: 21 (11 responses and 10 recordkeepers)

13. Estimate of Other Additional Costs

The NRC has determined that the quantity of records to be maintained is roughly proportional to the recordkeeping burden and, therefore, can be used to calculate approximate records storage costs. Based on the number of pages maintained for a typical clearance, the records storage cost has been determined to be equal to 0.0004 times the recordkeeping burden cost. Because the recordkeeping burden is estimated to be 165 hours, the storage cost for this clearance is \$17.09 (165 hours x 0.0004 x \$259/hour).

14. Estimated Annualized Cost to the Federal Government

The estimated annual burden to the government for reviewing licensee and certificate holder requests for enforcement discretion and NFPA 805 LOIs is 40 hours per request. Approximately 9 licensees and 1 certificate holder are expected to request 1 enforcement discretion each year, plus 1 licensee is expected to submit 1 LOI to implement NFPA 805. Therefore, the total burden is estimated at 440 hours (11 licensees/certificate holders x 40 hours = 440 hours). The total cost at \$259 per hour is \$113,960 (440 hours x \$259 per hour = \$113,960).

15. Reasons for Change in Burden or Cost

The overall estimated burden decreased by 120 hours from 1,825 to 1,705 hours because of a reduction in the number of expected LOIs from 4 to 1 (3 x 40 hrs = 120 hrs) submittals for this clearance period. This resulted in a reduction of 120 hours from 1,660 to 1,540 reporting hours. Since 2005, 15 licensees have submitted LOIs, which averages to three submittals per year. However, at the present time, we have no indication that any new licensees will be submitting a letter of intent to transition to 10 CFR 50.48(c). The remaining licensees that have not elected to file a letter of intent may at any time decide that the performance-based program may be desirable. There is reason to believe that once the process has been successfully demonstrated through the completion of the first group of non-pilot applications, more licensees may decide to file a letter of intent. Given this and the number of remaining licensees that could submit an LOI, it is estimated that 1 LOI annually could be submitted during this clearance period. The NRC does not expect to receive any letters of retraction.

Although there has been an increase in the fee rate from \$258 to \$259, the reduction in LOI submittals resulted in a decrease in overall burden cost from \$470,850 to \$441,595.

16. Publication for Statistical Use

None.

17. Reason for Not Displaying the Expiration Date

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

18. Exceptions to the Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.