

**ROADMAP
NRC 2012 ENFORCEMENT POLICY REVISION**

**COMPARISON OF THE JULY 12, 2011, NRC ENFORCEMENT POLICY TO THE PROPOSED
2012 REVISION OF THE ENFORCEMENT POLICY**

Purpose of 2012 Enforcement Policy Revision

The purpose of the proposed 2012 revision to the Enforcement Policy is to address items from Staff Requirements Memorandum (SRM)-SECY-09-0190, "Staff Requirements—SECY-09-0190—Major Revision to NRC Enforcement Policy," dated August 27, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102390327), to clarify the use of terms, to provide amplifying guidance as needed, and to add guidance on enforcement issues not addressed in the previous version of the policy.

Background of the 2012 Policy Revision

The U.S. Nuclear Regulatory Commission (NRC) modified its Enforcement Policy on a number of occasions to address changing requirements and additional experience. It published major revisions of the policy in the *Federal Register* (FR) on June 30, 1995 (60 FR 34381), and September 30, 2010 (75 FR 60485). The Policy was most recently revised on July 12, 2011, with the addition of an interim policy (i.e., Section 9.2, Enforcement Discretion for the Minimum Days Off Requirements of § 26.205(d)(3))

The changes being proposed by the staff in the 2012 policy revision address items from SRM-SECY-09-0190, items evaluated and proposed by the staff, and other minor edits.

The staff provided opportunities for the public to comment on the 2012 proposed revision. The staff solicited comments from all stakeholders, including public interest groups, States, members of the public, and the regulated industry (i.e., reactor and materials licensees, vendors, and contractors) in two FR notices and a public meeting.

On September 6, 2011, the NRC published a notice (76 FR 54986) proposing several changes to the NRC Enforcement Policy to address items in SRM-SECY-09-0190, as well as additional changes proposed by the staff.

On December 6, 2011 (76 FR 76192), the NRC requested comments on more proposed changes to the policy. The December notice also solicited comments on the effectiveness of the September 30, 2010, revision of the policy, which the staff committed to do in SECY-09-0190, dated December 30, 2009 (ADAMS Accession No. ML093200520).

On January 24, 2012, the NRC Office of International Programs and the Office of Enforcement held a public meeting to provide an opportunity for the Nuclear Energy Institute, industry representatives, and the general public to discuss changes to the Enforcement Policy related to the export and import of nuclear equipment and material, among other issues.

Summaries of the comments and the staff's responses appear in ADAMS Accession Nos. ML11299A156 and ML11350A043. They are also available on the Office of Enforcement Web page.

**Roadmap: Comparison of the July 12, 2011 NRC Enforcement Policy
to the Proposed 2012 Revision of the Enforcement Policy**

Note: In response to the Commission’s direction in SRM-SECY-09-0190 (Item 2), this roadmap explains the substantive changes below, ordered by policy section number, including the basis for each substantive change the NRC staff is proposing to the policy. While this roadmap only provides summaries of the substantive changes proposed, all proposed changes—including the substantive changes, nonsubstantive changes, and minor editorial changes—are shown in a redline and strikeout version of the July 12, 2011, revision (ADAMS Accession No. ML110970676).

Section **Change Summary**

- 2.2.2 Change title from “Severity Level” to “Traditional Enforcement”. The intent of the changes is to point out that this section applies to traditional enforcement and to make a distinction with Section 2.2.3, Operating Reactor Assessment Program, which follows in the Policy.

- 2.2.5 Revise the title of Section 2.2.5 to “Export and Import of Nuclear Equipment and Material” for consistency with the current title of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 110, “Export and Import of Nuclear Equipment and Material.”

- 2.3.2.a Revise to provide all licensee and nonlicensees with credit for a corrective action program (CAP) for certain severity level (SL) IV violations. This revision would allow all licensees and nonlicensees with an approved corrective action program (CAP) to have NRC-identified SL IV violations treated as noncited violations (NCVs), if the violation meets certain other criteria.

- 2.3.2.b Revise to include nonlicensees; to clarify that NCVs may also be issued to nonlicensees, as well as all other licensees, that do not have a CAP, when they meet the NCV criteria stated in Section 2.3.2.b.

- 2.3.4 Revise to remove language stating that the NRC will assess at least a base civil penalty for violations involving the loss of control of radioactive materials. The intent of the revision is to maintain the existing lost-source policy to issue at least a civil penalty, while also giving the staff flexibility in cases in which a licensee lost NRC-regulated material but took immediate action to recover it in a timely manner, with little or no risk to the public.

Add guidance to provide factors for the staff to consider when evaluating the appropriateness of daily civil penalties for continuing violations of at least moderate significance (i.e., at least an SL III). The new guidance on the use of daily civil penalties replaces an existing paragraph in Section 2.3.4.

Add wording similar to the wording in the November 28, 2008, version of the policy, Section VI.C, “Civil Penalty,” (ADAMS Accession No. ML092440278), which emphasizes that the NRC normally assesses civil penalties for SL I and II violations and considers them for SL III violations. However, the staff modified the wording from the previous policy to stress that the civil penalty process described in

Section 2.3.4 should generally be followed to determine the appropriateness of any civil penalty and that civil penalties should be “considered” for SL I, II, and III violations.

- 2.3.5 The language, as currently written in the 2011 version of the policy, could imply that all orders associated with willful violations are immediately effective. To clarify the intent of Section 2.3.5, the staff revised one sentence to read: “Orders may be 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 staff made no other changes to the section.
- 2.3.11 Restore a section (i.e., Section 2.3.11, “Inaccurate and Incomplete Information”) to provide guidance on issues involving information that is inaccurate or incomplete. The staff takes the wording for this proposed new section essentially verbatim from the November 28, 2008, version of the policy, Section IX, “Inaccurate and Incomplete Information,” which was not included in the September 30, 2010, revision to the policy.
- 2.3.12 Restore a section (i.e., Section 2.3.12, “Reporting of Defects and Noncompliance”) to provide guidance on issues involving contractors that supply products or services for use in nuclear activities. The staff takes the wording for this proposed new section essentially verbatim from the November 28, 2008, version of policy, Section X, “Enforcement Action Against Non-Licensees,” which was not included in the September 30, 2010, revision to the policy.
- 2.4.1 Revise Section 2.4.1 in its entirety to provide clear and consistent guidance on predecisional enforcement conferences that allow licensees and individuals to respond to apparent violations before the NRC takes final escalated enforcement action. The revised text states, in part, that, to the extent practicable, the NRC will consider the licensee’s response before taking enforcement action.
- 2.4.3 Edit to update the guidance on alternative dispute resolution.
- 4.0 Revise to provide guidance on handling potentially damaging or disqualifying information involving an individual’s trustworthiness and reliability that may affect the individual’s unescorted access. When the NRC develops, maintains, or is given information about an individual’s trustworthiness and reliability, the agency may provide this information to a licensee that has granted, or is in the process of granting, unescorted access authorization. The staff believes that sharing this information is prudent and may be useful to a licensee in meeting the requirements of its access authorization program. It is the licensee’s responsibility to evaluate the information provided, in accordance with its access authorization program and to determine the appropriate actions for granting individual access authorizations.
- 4.3 Add guidance necessary to determine civil penalties for release of Safeguards Information (SGI) violations. The current Enforcement Policy provides limited guidance on the topic of civil penalties to individuals who release SGI.
- 6.3 Add one new SL IV example

- 6.4 Add one new violation example each for SL I, II, and III. The staff bases the three new examples on its enforcement experience with violations regarding fitness-for-duty issues involving licensed reactor operators. Edit, for clarification, the SL IV examples regarding nonwillful compromise of an application, test, or examination required by 10 CFR Part 55, "Operators' Licenses."
- Delete Example 6.4.d.2, because it includes "default" language (i.e., uses wording such as, "does not amount to a SL I, II, or III violation" or "does not result in a SL I, II, or III violation"). The staff concluded this wording does not provide the specificity that the policy attempts to achieve with other examples of violations, and, therefore, it should be deleted.
- 6.5 Add two new SL III examples.
- 6.6 Revise the emergency preparedness violation examples in Section 6.6. These revisions relate to changes being made to the "Emergency Preparedness Significance Determination Process" (NRC Inspection Manual Chapter 0609, Significance Determination Process," Appendix B, "Emergency Preparedness Significance Determination Process") used to assign significance levels to findings under the Reactor Oversight Process (ROP). These changes are intended to maintain consistency between enforcement outcomes for violations treated under traditional enforcement and those treated under the ROP.
- 6.8 Delete Example 6.8.d.4, because it includes "default" language (i.e., uses wording such as, "does not amount to a SL I, II, or III violation" or "does not result in a SL I, II, or III violation"). The staff concluded this wording does not provide the specificity that the policy attempts to achieve with other examples of violations, and, therefore, it should be deleted.
- 6.9 Add one new SL III example and two new SL IV examples and revise one SL IV example.
- 6.11 Delete Example 6.11.d.3, because it includes "default" language (i.e., uses wording such as, "does not amount to a SL I, II, or III violation" or "does not result in a SL I, II, or III violation"). The staff concluded this wording does not provide the specificity that the policy attempts to achieve with other examples of violations, and, therefore, it should be deleted.
- 6.13 Add clarifying edits to the SL I, II, and III examples.
- 6.14 Delete Example 6.14.d.4, because it includes "default" language (i.e., uses wording such as, "does not amount to a SL I, II, or III violation" or "does not result in a SL I, II, or III violation"). The staff concluded this wording does not provide the specificity that the policy attempts to achieve with other examples of violations, and, therefore, it should be deleted.
- 6.15 Add a new section (i.e., Section 6.15, "Export and Import Activities") to provide examples of violations and proposed severity levels for export and import activities. The current policy does not contain examples of violations for export and import activities that depict likely severity levels that the staff can use to assess the relative

significance of various violations of 10 CFR Part 110, "Export and Import of Nuclear Material and Equipment."

7.0 Revise the following Glossary definitions for the reasons stated:

Actual Consequences: Revise the definition to clarify that the effects of actual consequences related to onsite or offsite radiation exposures are those exposures exceeding 10 CFR 20.1201, "Occupational Dose Limits for Adults," or 10 CFR 20.1301, "Dose Limits for Individual Members of the Public."

Apparent Violation: Revise the definition to clarify that an apparent violation is an issue for which the NRC staff has not yet made a final enforcement determination (i.e., an apparent violation does not necessarily result in an escalated enforcement action, as the current policy definition states).

Lost-Source Policy: Revise the definition to conform to changes to Section 2.3.4, "Civil Penalties," with regard to civil penalties for a loss of control of regulated material.

Substantial Potential for Exposures or Releases in Excess of the Applicable Limits in 10 CFR Part 20: Rename the term to read: "Substantial Potential for Overexposure," to more accurately reflect the requirements of 10 CFR Part 20 and insert the words "radiation" and "dose" in the definition for consistency with 10 CFR Part 20.

Traditional Enforcement: Revise the definition to (1) clarify that, although traditional enforcement is typically used under the circumstances listed in the current definition, use of traditional enforcement may not be limited to just those circumstances, (2) clarify that "actual consequences" means "actual safety and security consequences," and (3) provide a simple and more accurate description of issues that have no ROP "performance deficiency."

Add definitions for "Nonlicensee" and "Certification Holder, as those terms are used in the Enforcement Policy.

8.0 Revise the title of Category C, Table A, "Table of Base Civil Penalties." The revised title replaces the wording, "Fuel fabricators authorized to possess Category III quantities of SNM [special nuclear material] ..." with the wording, "All other fuel fabricators, including facilities under construction..." to ensure that the table addresses fuel facilities under construction. The remainder of the title of Category C is unchanged.

Add a new category (i.e., category g, Individuals who release safeguards information) with a base civil penalty of \$3,500.

9.2 Delete this interim enforcement policy. This interim policy is no longer needed because on July 21, 2011, the NRC issued (76 FR 43534) the final rule amending 10 CFR Part 26 to include the alternative to the minimum days off requirement.