

Summary of Each Substantive Proposed Policy Revision, Listed by Policy Section

(1) Section 2.3.2, “Noncited Violation”

(a) Credit for Fuel Cycle Licensee Corrective Action Program

Note: SECY-11-0155, “Proposed Changes to the Enforcement Policy Associated with Construction Activities,” dated November 1, 2011 (ADAMS Accession No. ML11293A034) also proposed changes to Section 2.3.2, which are in addition to the changes proposed in this SECY paper.

In response to the Commission’s direction in SRM-SECY-09-0190 (Item 1.f), the staff proposes to revise the Policy to provide fuel cycle licensees (and all other licensees or non-licensees) with credit for a corrective action program (CAP) for certain Severity Level (SL) IV violations. Presently, this CAP credit for certain SL IV violations is only available to power reactor licensees. This revision would allow fuel cycle licensees—and all other licensees or non-licensees—that have credit for an NRC-approved CAP to have NRC-identified SL IV violations treated as non-cited violations (NCVs), if certain other criteria are also met.

(b) NCV Credit to Non-licensees

The staff proposes to change the title of Section 2.3.2.b to “All Other Licensees and Non-licensees” and to edit Section 2.3.2.b and Footnote 4 to include non-licensees. These changes would clarify that the NRC may issue NCVs to non-licensees, if they meet the criteria in Section 2.3.2.b.

(2) Section 2.3.4, “Civil Penalties”

(a) Civil Penalties for Loss of Control of Regulated Material

In response to the Commission’s direction in SRM-SECY-09-190 (Item 1.a), the staff is proposing a revision to the Policy to remove language stating that the NRC will assess at least a base civil penalty for violations involving loss of control of radioactive materials. The intent of the change is to maintain the existing lost-source policy to issue at least a civil penalty while giving the staff flexibility to handle cases in which a licensee lost NRC-regulated material but took immediate action to recover it in a timely manner and with little or no risk to the public. In cases in which loss of control is the issue, rather than actual lost material, the NRC would use the normal civil penalty assessment process described in Section 2.3.4, rather than issuing an at-least-base civil penalty, as required by the current lost-source policy. The staff proposes to revise Section 2.3.4 to indicate that, notwithstanding the normal civil penalty assessment process, the NRC may exercise discretion and impose a civil penalty in cases in which a licensee has lost required control of its regulated radioactive material. Because of this proposed change, the staff will revise Section 7.0, “Glossary,” of the Policy to reflect the proposed changes in the definition of “lost-source policy” and will revise Note 3 in Table A of Section 8.0.

(b) Criteria for Use of Daily Civil Penalties

In SRM-SECY-09-0190 (Item 1.d), the Commission directed the NRC staff to include additional guidance, such as criteria and examples, in the next proposed revision to the

policy to help determine when daily civil penalties are appropriate. This proposed policy revision intends 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 staff proposes to replace an existing paragraph in Section 2.3.4 of the current Policy with revised wording to incorporate the daily civil penalty guidance.

(c) Civil Penalties for SL I, II, and III Violations

The staff proposes to incorporate wording, similar to the wording in the November 28, 2008, version of the Policy, Section VI.C, "Civil Penalty," (ADAMS Accession No. ML092440278), that 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 be followed to determine the appropriateness of any civil penalty. The staff also proposes replacing the words "are normally assessed" in the previous Policy with the words "are considered for severity level I, II, and III violations."

(3) Section 2.3.5, "Orders"

In SRM-SECY-09-0190 (Item 1.c), the Commission stated that the "language [in Section 2.3.5] implies that all orders associated with willful violations will be immediately effective; however, it is not clear whether this was intended to be a change in policy or not."

The language in Section 2.3.5 (i.e., "...or if the violation or conduct causing the violation is willful") is similar to the language in the November 28, 2008, version of the Policy (ADAMS Accession No. ML092440278), Sections II.B and VI.D. The language was not a change in the 2010 Policy revision and is essentially verbatim to that in the November 28, 2008, Policy. However, the staff agrees that the language as currently written could imply that all orders associated with willful violations are immediately effective. To clarify the intent of Section 2.3.5, the staff proposes to revise the subject 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."

(4) Section 2.3.11 (new section), "Inaccurate and Incomplete Information"

The staff proposes to restore a section to the Policy to provide guidance on issues involving inaccurate and incomplete information. The staff takes the wording for this proposed 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.

(5) Section 2.3.12 (new section), "Reporting of Defects and Noncompliance"

The staff proposes to restore a section to the Policy to provide guidance on issues involving contractors that supply products or services for use in nuclear activities. The staff took the wording for this proposed section essentially verbatim from the November 28, 2008, version of the Policy, Section X, "Enforcement Action Against Non-Licensees." This section was not included in the September 30, 2010, revision to the Policy.

(6) Section 2.4.1, “Predecisional Enforcement Conference”

In SRM-SECY-09-0190 (Items 1.b and 1.c), the Commission directed the NRC staff to revise the language with regard to predecisional enforcement conferences to provide clear and consistent guidance that allows licensees and individuals to respond to apparent violations before final escalated enforcement action is taken. The staff proposes to revise the current Section 2.4.1 in its entirety. The revised text states, in part, that to the extent practicable, the NRC will consider the licensee’s response before taking enforcement action.

(7) Section 2.4.3, “Alternative Dispute Resolution”

In SRM-SECY-09-0190 (Item 1.c), the Commission directed the staff to “ensure that rewording has not created inconsistencies, ambiguities or inadvertently changed the policy. For example: The description of the points when post-investigation Alternative Dispute Resolution (ADR) may be offered in the Policy should be consistent with the description in the Enforcement Manual.”

The staff proposes to revise Section 2.4.3 of the Policy to update the ADR guidance and will ensure that the description in the Enforcement Manual is consistent with the proposed Policy update.

(8) Section 4.0, “Enforcement Actions Involving Individuals”

The staff proposes to provide guidance for handling potentially damaging or disqualifying information involving an individual’s trustworthiness and reliability that may affect an individual’s unescorted access. The NRC requires selected licensees to establish, maintain, and implement the requirements of Title 10 of the Code of Federal Regulations (10 CFR) 73.56, “Personnel Access Authorization Requirements for Nuclear Power Plants.” The NRC has established these requirements to provide high assurance that individuals granted unescorted access and those certified for unescorted access authorization are trustworthy and reliable and do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage. Occasionally, the NRC investigates individuals for potential deliberate misconduct of NRC regulations. When the NRC develops, maintains, or is given information about an individual’s trustworthiness and reliability, the agency may provide this information to the licensee that 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.

(9) Section 4.3, “Civil Penalties to Individuals”

The staff identified an area of the Policy that may require additional clarity. The Policy provides little guidance in the area of civil penalties for individuals who release safeguards information (SGI). Therefore, the staff is proposing additional guidance. While the current policy would not preclude such an action, the clarity of that ability is subtle and, more specifically, the amount of a base civil penalty is not specified. Therefore, the staff believes that additional narrative and a civil penalty amount is necessary to provide increased deterrence for those individuals who release SGI.

The staff proposes to determine the appropriateness of such civil penalties on a case-by-case basis, depending on the circumstances and significance associated with each case. The staff is proposing a base civil penalty of \$3,500 for individuals who release SGI. This amount was developed, in part, by benchmarking several federal government agencies that issue civil penalties to individuals. The staff is proposing a base civil penalty amount of \$3500 which is 50percent of the lowest base civil penalty currently in Section 8.0, Table of Base Civil Penalties, Table A. The staff proposes to add a new category to Table A to reflect this base civil penalty.

(10) Section 6.0, "Violation Examples"

The staff proposes to delete four SL IV violation examples that include "default" language (i.e., use wording such as, "does not amount to an SL I, II, or III violation" or "does not result in an SL I, II, or III violation"). The four examples are 6.4.d.2, 6.8.d.4, 6.11.d.3, and 6.14.d.4. The staff believes that these SL IV examples do not provide the specificity that the Policy attempts to achieve with other violation examples and therefore should be deleted.

(11) Section 6.3, "Materials Operations"

The staff proposes to add one SL IV example.

(12) Section 6.4, "Licensed Reactor Operators"

The staff proposes to 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 for fitness-for-duty issues involving licensed reactor operators. The staff also proposes to edit, for clarification, the SL IV examples regarding the non-willful compromise of an application, test, or examination required by 10 CFR Part 55, "Operators' Licenses."

(13) Section 6.5, "Facility Construction (10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants)"

The staff proposes to add two SL III examples.

(14) Section 6.6, "Emergency Preparedness"

The staff proposes to revise the SL examples for emergency preparedness in Section 6.6. to align them with changes the NRC is making 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 ROP. The NRC is proposing these changes to maintain consistency between enforcement outcomes for violations treated under traditional enforcement and those treated under the ROP.

(15) Section 6.9, "Inaccurate and Incomplete Information or Failure to Make a Required Report"

The staff proposes to add one new SL III example and two new SL IV examples and revise one SL IV example.

- (16) Section 6.11, “Reactor, Independent Spent Fuel Storage Installation, Fuel Facility, and Special Nuclear Material Security”

The staff proposes to delete one SL IV example.

- (17) Section 6.13, “Information Security”

The staff proposes clarifying edits to the SL I, II, and III examples.

- (18) Section 6.14, “Fitness for Duty”

The staff proposes to delete one SL IV example.

- (19) Section 6.15 (new section), “Export and Import Activities”

The staff proposes to add a new section (Section 6.15, “Export and Import Activities”) to provide examples of violations and proposed SLs for export and import activities. The current Policy does not contain examples of violations for export and import activities that depict likely SLs that the staff can use to assess the relative significance of various violations of 10 CFR Part 110, “Export and Import of Nuclear Equipment and Material.”

- (20) Section 7.0, “Glossary”

For the reasons given below, the staff proposes to revise the following Glossary definitions:

- (a) 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.”

- (b) Apparent Violation

Revise the definition to clarify that an apparent violation is an issue for which a final enforcement determination has not been made (i.e., an apparent violation does not necessarily result in an escalated enforcement action, as the current Policy definition states).

- (c) Lost-Source policy

Revise the definition to conform to changes to Section 2.3.4, “Civil Penalties,” with regard to civil penalties for the loss of control of regulated material.

- (d) Substantial Potential for Exposures or Releases in Excess of the Applicable Limits

Rename the term to read: “Substantial Potential for Overexposure,” to more accurately reflect the requirements of 10 CFR Part 20, “Standards for Protection Against Radiation,” and insert the words “radiation” and “dose” in the definition, for consistency with 10 CFR Part 20.

(e) Traditional Enforcement

Revise the definition to (1) clarify that, although traditional enforcement typically applies to 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.”

The staff also proposes to add definitions for “Nonlicensee” and “Certificate Holder” as those terms are used in the Enforcement Policy.

(21) Section 8.0, “Table of Base Civil Penalties, Table A”

(a) Revise the wording of Category C

The staff proposes to revise the title of Category C in Table A, “Table of Base Civil Penalties.” The proposed title revision to Category C 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.

(b) Add a new category for release of SGI

The staff proposes to add a new category to Table A (i.e., Category G, “Individuals Who Release Safeguards Information”). The staff proposes a base civil penalty of \$3,500 for Category G.

(22) Section 9.2, “Enforcement Discretion for the Minimum Days Off Requirements of § 26.205(d)(3)”

The staff proposes to 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.