

UNITED STATES NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NEW REACTORS
WASHINGTON, D.C. 20555-0001

March 13, 2013

**NRC REGULATORY ISSUE SUMMARY 2005-01, REVISION 1
CHANGES TO NOTICE OF ENFORCEMENT DISCRETION
PROCESS AND STAFF GUIDANCE**

ADDRESSEES

All holders of an operating license or construction permit for a nuclear power reactor under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," except those who have permanently ceased operations and have certified that the fuel has been permanently removed from the reactor vessel.

All holders of or applicants for a combined license issued under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform stakeholders of certain immediately effective changes to the notice of enforcement discretion (NOED) staff guidance and process. For holders of or applicants for a combined license, this process will become applicable when the NRC makes its finding under 10 CFR 52.103(g) that the licensee may operate the reactor in accordance with its license and technical specifications. This RIS requires no action or written response on the part of an addressee.

This RIS informs stakeholders of changes to the NRC's internal process for handling NOEDs, including a change in the NRC's Inspection Manual. Inspection Manual Chapter (IMC) 0410 replaces Inspection Manual Part 9900, "Technical Guidance-NOEDs."

BACKGROUND INFORMATION

Section 3.8 of the NRC's Enforcement Policy describes the circumstances in which the NRC staff may exercise enforcement discretion in the form of a NOED.

The NRC staff may choose not to enforce the applicable technical specification limiting condition for operation or other license conditions in certain special circumstances. Such circumstances include when compliance would involve an unnecessary plant transient or the performance of a test, inspection, or system realignment that may not be the most prudent action to take under the specific plant conditions, or may cause unnecessary delays in plant startup, without a corresponding health and safety benefit.

The NRC staff will grant a NOED only if 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. In making a risk-informed decision, the NRC staff

would weigh the consequences of compliance against the potential radiological or other hazards that may occur with continued operation.

The NRC staff must also determine that granting a NOED would not impact safety. If the NRC staff grants a NOED for severe weather or other natural phenomena, the staff shall quickly inform the Commission.

NRC's issuance of a NOED does not change the fact that a violation will occur, nor does it imply that the NRC is exercising enforcement discretion for any violation that may have led to the violation at issue. In each case where the NRC has chosen to issue a NOED, the NRC will normally take enforcement action for the root causes (to the extent violations were involved) that led to the noncompliance for which enforcement discretion was used.

Since June 1999, the NRC has provided staff guidance for implementing the NOED policy for power reactors in the NRC Inspection Manual Part 9900, "Technical Guidance-NOEDs." The NRC last updated this guidance on December 22, 2004.

Based on over 8 years of NRC staff experience with the current guidance, the staff decided that some aspects of the guidance required clarification or enhancement. The Inspection Manual has been updated accordingly. This RIS discusses the internal NRC process clarifications and enhancements the agency is implementing. The NRC staff presented these changes to stakeholders at a public meeting on October 23, 2012.

SUMMARY OF CHANGES

1. Inspection Manual Chapter 0410 replaces Inspection Manual Part 9900

The NRC staff continues to improve the guidance provided in the IMC's by reducing the Inspection Manual Part 9900 sections, and where applicable, creating new chapters in the IMC. The NRC has deleted the Inspection Manual Part 9900, "Technical Guidance for NOEDs," and replaced it in its entirety with IMC 0410.

2. Definitions

Additional definitions have been added to provide consistency in implementing the NOED guidance.

3. Types of Notices of Enforcement Discretion

Within Inspection Manual Part 9900, there were two types of NOEDs: (1) regular and (2) severe weather or other natural phenomena-related. IMC 0410 also has only two types of NOEDs, (1) regular NOED, and (2) natural event NOED. This simplifies referencing within the IMC.

4. Guidance for Pandemic and Grid Instability

Although historically covered by "severe weather or other natural phenomena-related" NOEDs, the NRC has provided additional staff guidance for these situations. As with any NOED, a licensee must comply with all 10 CFR regulations, and maintain radiological safety and security.

5. Administrative and Organizational Changes

This update includes the organizational changes that have occurred over the last 7 years, both within the Office of Nuclear Reactor Regulation (NRR) and the NRC Regional offices. In addition, administrative updates are included.

6. Staff Responsibilities

To assist the NRC staff and ensure consistency in the implementation of the guidance, the NRC has more fully defined staff responsibilities.

BACKFIT DISCUSSION

This RIS informs stakeholders of changes to an NRC internal guidance document. This RIS requires no action or written response and is, therefore, not a backfit under 10 CFR 50.109. Consequently, the NRC staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on the RIS was not published in the *Federal Register* because it is informational and pertains to a NRC staff guidance document that does not represent a departure from current practice. In addition, a public meeting was held on October 23, 2012, to inform stakeholders of the changes to the staff NOED guidance.

CONGRESSIONAL REVIEW ACT

The NRC has determined that this RIS is not a rule as designated by the Congressional Review Act (5 U.S.C 801-808) and, therefore, is not subject to the Act.

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing information collection requirements were approved by the Office of Management and Budget, approval numbers 3150-0146, 3150-0011 and 3150-0136.

PUBLIC PROTECTION NOTIFICATION

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

CONTACT

Please direct any questions about this matter to the technical contact listed below.

/RA/

Laura A. Dudes, Director
Division of Construction Inspection
and Operational Programs
Office of New Reactors

/RA/

Lawrence E. Kokajko, Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

Technical Contact: Sheldon Stuchell, NRR
301-415-1847
E-mail: Sheldon.Stuchell@nrc.gov

Note: NRC generic communications may be found on the NRC public website,
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