

NRC INSPECTION MANUAL

PLPB

MANUAL CHAPTER 0410

NOTICES OF ENFORCEMENT DISCRETION

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0410-01 PURPOSE

Inspection Manual Chapter (IMC) 0410 provides the U.S. Nuclear Regulatory Commission (NRC) staff a process to exercise enforcement discretion for unanticipated temporary noncompliances with limiting conditions for operation (LCO) in power reactor technical specifications (TS) or other license conditions. This type of discretion is addressed in the NRC's Enforcement Policy and is designated as a notice of enforcement discretion (NOED). A NOED can be granted for a power reactor that is at power, in startup, or in shutdown under specific conditions.

0410-02 OBJECTIVES

02.01 To provide NRC staff guidance and consistency on the decision-making process for consideration of a NOED request.

02.02 To ensure consistency in the format and content of requests for a NOED.

02.03 To arrive at an objective assessment of safety margins when operating during an LCO or outside of other license conditions when considering a NOED request.

0410-03 APPLICABILITY

Licensed operators, in accordance with a plant specific operating license (OL) and plant specific TS, control the configuration of nuclear power plant (NPP) structures, systems, and components (SSCs). The OL and TS specify the actions to be taken when a license condition or a TS LCO is not satisfied.

Under unique circumstances, an operating nuclear power plant may experience an unanticipated, temporary noncompliance that could cause the plant to incur more risk by shutting down because of the expiration of a LCO time limit than it would incur from continued operation. Unique circumstances may also apply during startup, or when an NPP is shutdown. In such cases, enforcing the license condition or TS may not be appropriate, and, for these cases, the NRC provides for a specific type of enforcement discretion known as a NOED.

Under the regulation at Title 10 of the *Code of Federal Regulations* (10 CFR) 50.54(x), a licensee may depart from its TS in an emergency without prior NRC approval when it must act immediately to protect public health and safety. However, situations occasionally occur that 10 CFR 50.54(x) does not address and for which the NRC may appropriately exercise enforcement discretion consistent with the interests of public safety. Provided the licensee has not abused the emergency provisions of 10 CFR 50.91, "Notice for Public Comment; State Consultation," by failing to apply for an amendment (including an exigent or emergency amendment) in a timely manner, the NRC can use the NOED procedure to expeditiously consider a licensee's request for enforcement discretion under limited circumstances.

03.01 Operating Power Reactors. IMC 0410 applies to all operating commercial nuclear power reactors except those sites under IMC 0350 or IMC 0351 and those sites that have ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

03.02 Atomic Energy Act. The contents of this IMC do not restrict the NRC from taking any necessary actions to fulfill its responsibilities under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974.

03.03 NOED Criteria. NOEDs are warranted only if compliance with TS or with other license conditions would involve one or more of the following:

- a. an unnecessary plant transient
- b. an unnecessary down-power or the shutdown of a reactor without a corresponding health and safety benefit
- c. the performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions
- d. unnecessary delays in plant startup without a corresponding health and safety benefit
- e. the potential for an unexpected plant shutdown during severe weather, a pandemic, other natural phenomena, or a terrorist attack that could exacerbate already degraded electrical grid conditions and could have an adverse impact on the overall public health and safety or common defense and security

03.04 NOED Uses. A NOED may be appropriate in the following cases:

- a. corrective maintenance
- b. continued operation during natural phenomena (severe weather, pandemic, or other natural phenomena)
- c. continued operation during public emergencies (unrelated to natural events)

In all cases, the NRC will consider the impact of exercising enforcement discretion on public health and safety and the common defense and security. If NRC determines that operation outside of TS or license conditions would unacceptably affect safety or security, NRC will not approve a NOED. Otherwise, the NRC will base its determination for approving a NOED on balancing the impacts on public health and safety, or the common defense and security of continued operation outside of TS or license conditions, against potential radiological or other hazards resulting from compliance with the TS or license conditions. Continued operation of a plant during the period of enforcement discretion should not cause risk to exceed the level determined acceptable (subsection 0410-07 of this IMC) during normal work controls and, therefore, there should be no net increase in radiological risk to the public. This may include comparing the risk of continued operation under a NOED, with the transition risk associated with license condition or LCO compliance (i.e., plant shutdown and restart, including any benefits attributable to compensatory actions). Therefore, the assessment of the net risk of operating under a NOED must account for all license conditions, TS, and regulatory requirements that apply to the situation and any associated limitations and compensatory actions. The assessment should also take into account the provisions of the maintenance rule,

10 CFR 50.65, "Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants."

03.05 Inappropriate Uses. The NOED process addresses an unanticipated temporary noncompliance with license conditions and TS when an amendment is not practical. NOEDs are not appropriate in the following cases:

- a. to allow planned entries into TS required actions to perform maintenance
- b. to troubleshoot maintenance issues
- c. after a violation of the license has already occurred
- d. after a licensee has been denied an emergency TS change request for the same issue based on the technical bases of the request
- e. to allow operation beyond any safety limit contained in the facility license
- f. to use for operator licenses or licensing
- g. for any non-conformance with regulations

03.06 Nonconformance With Regulations. NOEDs are not appropriate for a nonconformance with regulations, updated final safety analysis reports (UFSARs), or codes. Exemptions from regulations, noncompliance with UFSARs, and reliefs from codes must be processed in accordance with the provisions of 10 CFR Parts 50.12, "Specific Exemptions;" 10 CFR 50.59, "Changes, Tests, and Experiments;" or 10 CFR 50.55a, "Codes and Standards," respectively, and are not addressed by this guidance. In these situations, the licensee must perform a prompt safety assessment of the noncompliance and make an appropriate operability determination. The licensee should determine which other NRC requirements apply to the situation (e.g., Criterion XVI, "Corrective Action," of Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR 50.12) and take the required actions.

The fatigue management requirements in 10 CFR 26.207(d) give licensees an exception to the work-hour scheduling and work-hour control requirements of 10 CFR 26.205(c) and 10 CFR 26.205(d) during declared emergencies, as defined in the licensee's emergency plan. The NRC Office of Enforcement issued EGM-09-008, "Enforcement Guidance Memorandum-Dispositioning Violations of NRC Requirements for Work Hour Controls Before and Immediately After a Hurricane Emergency Declaration," dated September 24, 2009, to give NRC staff guidance for dispositioning certain violations under 10 CFR Part 26 "Fitness for Duty Programs," and potentially approving enforcement discretion for the affected requirements. For situations covered by EGM-09-008, a NOED is not necessary.

03.07 Emergency License Amendment. The NRC staff shall emphasize with licensees that the license amendment process under 10 CFR 50.91 should be used in preference to NOEDs, whenever possible. The NRC may consider a NOED request only if the situation cannot be

resolved through a licensing action such as an emergency license amendment and the situation could not have been reasonably avoided.

03.08 Non-power Reactors. This guidance is not applicable to non-power reactors.

03.09 Public Availability of Information. Given the emergent nature of the conditions that trigger the need for a NOED, there is little opportunity for public involvement. Therefore, to offset the fact that the process does not involve all stakeholders; the NRC requires that all NOED requests and responses be publicly available in accordance with Management Directive 3.4, "Release of Information to the Public."

0410-04 DEFINITIONS

04.01 Compensatory Actions. For the purposes of a NOED request, compensatory actions (or compensatory measures) are those temporary actions taken to provide reasonable assurance the necessary function as detailed in the TS or license condition will be compensated for during the period of the NOED. Compensatory measures include but are not limited to actions such as firewatches, administrative controls, temporary modifications, maintenance stoppages, and features of components. Such actions can reduce both the duration and the magnitude of the elevated risk condition, thereby reducing the incremental risk incurred. Compensatory actions eliminate or reduce the additional risk associated with a licensee operating outside of TS or license conditions (see subsection 04.17, Risk Mitigation of this IMC).

04.02 Completion Time. Plant-specific TS set time limits (completion time) on how long a plant can continue to operate with specified equipment out of service or degraded. The completion time (CT) is the amount of time needed to repair or restore the equipment to operable status following discovery of a degraded or non-complying condition. TS CTs are defined based on deterministic considerations and engineering judgment, without the benefit of risk analyses. The NOED CT is the period beyond the TS CT that it will take the licensee to correct the situation, perform testing to verify operability, and return the plant to normal operation, as determined by the licensee and reported to the NRC. The NOED CT will include the time needed to implement all repairs and testing for the specified equipment. A NOED is not to be used for routine maintenance and the CT needed to conclude routine maintenance unless routine diagnostic maintenance has uncovered system or component failures that result in further testing. The improved standard technical specifications (STs) (NUREGs 1430-1434) use the terminology "completion times" in place of "allowed outage time" (AOT).

04.03 Emergency Amendment. In 10 CFR 50.91(a)(5), the NRC refers to an "emergency situation" as one in which the Commission finds "that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level." Where the NRC finds that an emergency exists, the Commission may issue a license amendment involving no significant hazards consideration without prior public notice and opportunity for hearing or public comment. This type of license amendment is generally called an "emergency amendment." The provisions in 10 CFR 50.91(a)(5) can be used for emergency TS changes.

The Commission expects licensees to apply for amendments in a timely manner, and it will decline to dispense with public notice and comment in cases in which it finds the licensee has abused the emergency provision.

04.04 Exigent Amendment. In 10 CFR 50.91(a)(6), the NRC refers to “exigent circumstances” as those in which “the licensee and the Commission must act quickly, such that time does not permit the Commission to publish a *Federal Register* notice allowing 30 days for prior public comment.” Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine the amendment request involves no significant hazards consideration using the criteria in 10 CFR 50.92(c), “Issuance of Amendment.” This means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Typically, the NRC acts on an exigent amendment request within 30 to 45 days.

For exigent amendments, the Commission will provide notice as specified in 10 CFR 50.91(a)(6). As with an emergency amendment, the Commission will use the provisions for normal public notice and comment if it finds the licensee failed to apply for the exigent amendment in a timely manner.

04.05 FERC. The Federal Energy Regulatory Commission (FERC) is an independent agency of the U.S. Government that regulates the interstate transmission of electricity, natural gas, and oil. FERC oversees the North American Electric Reliability Corporation (NERC).

04.06 Grid Instability. Grid instability is the inability of an electric system to maintain a state of equilibrium during normal and abnormal conditions or disturbances.

04.07 IMC 0350 Process. IMC 0350, “Oversight of Reactor Facilities in a Shutdown Condition Due to Significant Performance and/or Operational Concerns,” outlines an oversight process that monitors licensee performance, inspections, and restart efforts for plants in shutdown conditions with significant performance or operational concerns or both.

04.08 IMC 0351 Process. IMC 0351, “Implementation of The Reactor Oversight Process at Reactor Facilities in an Extended Shutdown Condition for Reasons Other Than Significant Performance Problems,” outlines an oversight process that monitors licensee performance, inspections and restart efforts for plants in an extended shutdown condition for reasons other than significant performance problems.

04.09 Incremental Conditional Core Damage Probability. An incremental conditional core damage probability (ICCDP) is one of the acceptable risk metrics (along with ICLERP, see subsection 04.10 of this IMC) representing the increase in the probability of core damage predicted during the period requested in the NOED. This dimensionless metric is calculated as the difference between the increased core damage frequency (CDF) and the base case CDF, multiplied by the NOED completion time under consideration. For NOED evaluations, the impact of testing and maintenance unavailability for SSCs outside of the ones in question shall be removed (i.e., zero maintenance model will be used). The zero maintenance model should be used to establish the plant’s ICCDP, by applying it to both the baseline and the degraded

case associated with the period of enforcement discretion. Additionally, for the degraded case, the model shall reflect the out of service equipment under consideration for the NOED request. The ICCDP can therefore be calculated using the formula: $ICCDP = [(zero\ maintenance\ conditional\ CDF, \text{ taking into account the equipment that is out of service for the NOED request}) - (zero\ maintenance\ baseline\ CDF)] \times (NOED\ CT\ under\ consideration)$.

04.10 Incremental Conditional Large Early Release Probability. An incremental conditional large early release probability (ICLERP) is a risk metric representing the increase in probability of significant, unmitigated releases from containment in a period prior to the effective evacuation of the close-in population such that there is a potential for early health effects. This dimensionless metric is calculated as the difference between the increased large early release frequency (LERF) and the base case LERF, multiplied by the NOED completion time under consideration under a semi-probabilistic framework, rather than a full level 2 probabilistic risk assessment (PRA), as currently implemented. For NOED evaluations, the impact of testing and maintenance unavailability for SSCs outside of the ones in question shall be removed (i.e., zero maintenance model). The zero maintenance model should be used to establish the plant's ICLERP by applying it to both the baseline and the degraded large early release case associated with the period of enforcement discretion. Additionally, for the degraded case the model shall reflect the out of service equipment under consideration for the NOED request. ICLERP can be calculated using the formula: $ICLERP = [(zero\ maintenance\ conditional\ LERF, \text{ taking into account equipment that is out of service for the NOED request}) - (zero\ maintenance\ baseline\ LERF)] \times (NOED\ CT\ under\ consideration)$.

04.11 Net Increase in Risk. For the purposes of a NOED request, when a NPP is operating outside of the plant's TS or license conditions, there is generally a net increase in radiological risk. This increase in risk may not have been quantitatively defined, but has been built into the TS or license condition, with the result that the risk associated with a deviation from the TS or license condition has been defined by a time limit (TS CT). This risk is above, and should not be confused with, the risk associated with routine maintenance activities. The granting of a NOED shall result in no net increase in risk after the licensee has implemented compensatory measures.

04.12 No Net Increase in Risk. For the purposes of a NOED request and for the request to be approved by the NRC, the licensee must demonstrate that during the period of the NOED, there is no net increase in radiological risk after the licensee has implemented compensatory measures. This means that continued operation of the plant during the period of enforcement discretion will not cause risk to exceed the level determined acceptable during normal work control levels or will not exceed the transitional risk of compliance with the TS or license condition.

04.13 Normal Work Control Levels. Normal work control levels (routine work controls) are actions implemented at a NPP to control the temporary and aggregate risk increases from maintenance activities such that the plant's average baseline risk is maintained within a minimal range. This is accomplished by assessing risk, to plan and schedule maintenance, such that the risk increases are limited, and to take additional actions beyond routine work controls to address situations where the temporary risk increase is above a certain threshold. These thresholds may be set on the basis of qualitative considerations (example – remaining mitigation capability), quantitative considerations (example – temporary increase in CDF), or blended

approaches using both qualitative and quantitative insights. Typically, an ICCDP value of 10E-6 is a quantitatively assessed threshold used for acceptable risk management actions associated with normal work control activities. This means that normal work control processes are followed for any maintenance activity, and that no additional actions to address risk management are necessary.

04.14 North American Electric Reliability Corporation. NERC is the organization that develops and enforces reliability standards, assesses future adequacy, and audits owners, operators, and users of the bulk power system for preparedness. As the electric reliability organization, NERC is subject to audit by FERC and governmental authorities in Canada.

04.15 Reliability Coordinator. Reliability coordinators (RCs) are organizations that monitor the bulk power system (BPS) or interconnected electrical transmission system in large geographic areas of North America and coordinate the use of the BPS, or grid, to prevent (or reduce) the likelihood of a system overload or blackout. These coordinators perform continuous monitoring and analysis of the grid and are in constant communication with the owners and operators of the generation and transmission systems to maintain a reliable power supply for all who are connected to the BPS. They take appropriate remedial action as dictated by system conditions. RCs also follow reliability standards and are monitored for compliance.

The RC is the entity that has the highest level of authority in responsibility for the reliable operation of the BPS; has the wide-area view of the BPS; and has the operating tools, processes, and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The RC has the purview that is broad enough to enable the calculation of interconnection reliability operating limits, which may be based on the operating parameters of transmission systems beyond any transmission operator's vision. For example, the RC has the responsibility and authority to act and direct actions in accordance with relevant NERC reliability standards and other directives put forth from NERC and FERC. There are 13 U.S. RC's reporting to NERC.

04.16 Required Actions. Required actions are those actions a licensee must take to remain within its TS and license conditions.

04.17 Risk Mitigation. For the purposes of a NOED request, risk mitigation or risk reduction are the compensatory actions taken by the licensee to reduce the overall plant risk caused by a licensee operating outside of TS or license conditions. These actions may be in accordance with the licensee's maintenance rule program.

04.18 Safety. The Atomic Energy Act of 1954, as amended, establishes "adequate protection" as the standard of safety on which NRC regulation is based. In the context of NRC regulation, safety means avoiding undue risk or, stated another way, providing reasonable assurance of adequate protection for the public in connection with the use of source, byproduct, and special nuclear materials.

04.19 Startup. For purposes of this guidance, "startup" is any condition the reactor may be in other than Mode 1 or cold shutdown.

04.20 Unnecessary Transient. For the purposes of a NOED request, an unnecessary (or undesired) transient may include the following: nonemergency plant transitions that may affect the radiological health and safety of the public; a sudden plant shutdown (e.g., scram or reactor trip); an impact to the electrical grid during times of grid instability; or other plant transitions the NRC determines to be short-term and for which risk can be mitigated. An unnecessary transient is one that could occur as a result of compliance with a TS or license condition, but which, if avoided, would minimize potential safety consequences and operational risks. The process of requiring a NPP to cycle from full power to shutdown, and then restart, could be an unnecessary transient.

0410-05 RESPONSIBILITIES AND AUTHORITIES

05.01 NRR Director:

- a. Implements the requirements of this IMC within the Nuclear Reactor Regulation (NRR) Office of the NRC.
- b. Ensures uniform program implementation and effectiveness.

05.02 Regional Administrator:

- a. Is authorized to approve or terminate a NOED and may delegate the authority to approve a NOED to the Deputy Regional Administrator, the Director, Division of Reactor Projects (DRP) and the Deputy Director, DRP, after consultation with NRR.
- b. Implements the requirements of this IMC within his or her respective region.
- c. Ensures uniform program implementation and effectiveness within his or her respective region.
- d. Develops and issues NOED approval or denial letters to each licensee within his or her respective region.

05.03 Regional DRP Director and Deputy Director:

- a. May be authorized by a Regional Administrator (RA) to approve or terminate NOEDs. If authorized to approve or terminate NOEDs, will sign NOEDs after consultation with the RA or Deputy RA. The DRP Director and Deputy Director may not delegate this authority.
- b. Will be consulted on all NOEDs in their Region and concur, as appropriate.
- c. Determines, in consultation with NRR, the minimum NRC staffing needed to make a determination for the NOED based on the technical details of the NOED request.
- d. Leads any conference calls and opens each conference call by introducing the NRC personnel.
- e. Ensures the licensee's request addresses all topics required by this guidance.

- f. Is authorized to terminate a NOED and cannot delegate this authority.

05.04 Regional DRP Branch Chief:

- a. Serves as the lead in the NOED process for their respective plants.
- b. Promptly discusses situations that may result in a licensee NOED request with resident inspectors (RIs) and NRR plant project managers (PMs). Informs the DRP director, the cognizant Division of Reactor Safety branch chief (BC), and the senior reactor analyst (SRA) of a potential NOED.
- c. Assigns the appropriate work tracking codes for the regional staff.
- d. Coordinates closely with NRR concerning multiple plant common condition NOEDs to avoid duplication or inconsistent approaches.
- e. Organizes and participates in teleconferences with the appropriate regional and NRR personnel.
- f. Coordinates any licensee interactions with NRC staff.
- g. Ensures that technical information and drawings used for discussions are current.
- h. Coordinates reviews of a licensee's NOED submittal and prepares the staff NOED letter to the licensee documenting the conditions of enforcement discretion granted by the region.
- i. Verifies, to the extent practicable, the licensee's oral assertions and verifies the NOED request is consistent with NRC policy and guidance.
- j. Ensures the concurrence of NRR management before a NOED is granted.
- k. Assumes responsibility for inspection, follow-up, and enforcement for all NOEDs granted by the region.

05.05 Regional Senior Reactor Analyst:

- a. Participates in teleconferences concerning NOED requests.
- b. Initiates contact with licensee risk analysts to obtain the licensee's evaluation, if available.
- c. Contacts NRR PRA Operational Support Branch (APOB).
- d. Should perform an independent risk analysis of the licensee's risk assessment, given reasonable time constraints.
- e. To the extent practicable, conducts quantitative and qualitative assessments of risk associated with the NOED, in coordination with the NRR APOB risk analyst or SRA.

This should provide a risk-informed basis demonstrating that continued operation is within the plant's normal work control levels.

- f. Advises the RA, DRP Director, and BC on the risk implications of approving the NOED request.
- g. Seeks a consensus with the NRR risk analyst on the NOED's risk significance so that regional and HQ management receives consistent risk insights. The risk analysts shall explain any differences in risk calculations between NRR and the region. If the risk analysts from the region and NRR have divergent analyses and cannot reach a consensus (unless the differences in the analyses do not affect the decision to grant a NOED), consensus should be reached at the management level before proceeding with an NOED.
- h. Verifies that the licensee's NOED request states explicitly that there is no net increase in radiological risk associated with the licensee's proposed actions, and provides reasonable bases or justifications for this statement.
- i. If appropriate, provides concurrence on all granted NOEDs.

05.06 Regional Office Staff:

- a. Participates in NOED calls.
- b. Ensures the licensee's request is profiled in the Agencywide Documents Access and Management System (ADAMS) as "publicly available" in accordance with the agency's policy.
- c. Assumes responsibility for tracking the NOEDs it approves.

05.07 Senior Resident Inspector or Resident Inspector:

- a. Notifies the site DRP BC when a licensee may be contemplating a NOED request, and to the maximum extent possible, provides insight as to why and when the request may be made. The DRP BC shall be informed of the time until the TS LCO or license condition will require actions that could cause an "unnecessary transient" to occur.
- b. Informs the licensee that any questions on the process should be directed to the DRP BC.
- c. Informs the DRP BC of NOED request specifics, including the expected NOED request completion time and a proposed time to have a conference call.
- d. Participates in teleconferences concerning respective plant NOED requests.
- e. Verifies, to the extent practicable, the licensee's oral assertions before a NOED is granted.

- f. Opens an unresolved item (URI) when a NOED is granted to determine if there is a performance deficiency or if additional information is required to determine if the NOED issue is more than minor.
 - g. Documents staff determinations regarding enforcement, inspection, verification, and resolution activities in the next appropriate inspection report under the URI.
- 05.08 Regional Enforcement Coordination Staff:
- a. Coordinates the NOED with the Office of Enforcement (OE).
- 05.09 NRR Division of Policy and Rulemaking (DPR) Director:
- a. Develops assessment program guidance.
 - b. Ensures consistency of program implementation across the regions and NRR.
 - c. Provides program support during all NOED calls.
- 05.10 NRR DPR Process Expert:
- a. Participates in all NOED calls.
 - b. Verifies the NOED process is followed.
 - c. Develops and revises program documents (including this IMC) necessary for implementation of the NOED process.
- 05.11 NRR Division of Inspection and Regional Support (DIRS) Director:
- a. Identifies training needs associated with the NOED process.
 - b. Provides support for NOED calls, as needed, concerning follow-up inspections, and other technical staff as requested.
- 05.12 NRR Division of Operating Reactor Licensing (DORL) Director:
- a. Authorized to concur for NRR on the approval of a NOED, and may delegate the authority to DORL Deputy Directors.
 - b. Will be consulted on all NOEDs.
 - c. Recommends to and concurs with the DRP Director regarding the minimum NRC staffing needed to make a determination for the NOED based on the technical details of the NOED request.
- 05.13 NRR/DORL Plant Licensing Branch Chief:
- a. Verifies, to the extent practicable and in conjunction with the regional DRP BC, the licensee's oral assertions and verifies the NOED request is consistent with the staff's policy and guidance.
 - b. Will recommend any additional NRR or other program office concurrences.

05.14 NRR/DORL Plant Project Manager:

- a. Keeps abreast of operational power reactor events at his or her plant(s) and provides logistical support to the regional offices and other NRR staff during the NOED process.
- b. Ensures that NRR APOB analysts have been informed of the pending NOED.
- c. Opens a technical assignment control (TAC) number under licensing action code "LD" for all NOED actions that consume NRR resources.
- d. Organizes NOED teleconferences with appropriate regional and HQ personnel.
- e. Verifies, to the extent practicable and in conjunction with the regional DRP BC, the licensee's oral assertions.
- f. Informs the regional coordinator of the Office of the Executive Director for Operations (OEDO) of the approval of the NOED for input to the Commission.
- g. When a natural event NOED is requested, shall inform the OEDO and Commission by expeditiously submitting a Daily Note in accordance with OEDO Procedure-0350.
- h. Informs the Enforcement BC, of OE, of the approval of the NOED.
- i. Ensures an electronic copy of the letter issuing the NOED, and the follow-up license amendment letter, if applicable, is sent to the OE Internet Web master.

05.15 NRR/DRA Health Physics and Human Performance Branch:

- a. Provides support for NOED calls, as needed.

05.16 NRR/DRA Reliability and Risk Analyst or Senior Reactor Analyst:

- a. Supports the completion of the independent risk assessment of NOED requests and reviews the licensee's risk assessment, given reasonable time constraints.
- b. Evaluates the risk associated with the NOED request. The APOB risk analyst or SRA should seek a consensus with the regional SRA on the NOED's risk significance so that regional and HQ management receive consistent risk insights. The risk analysts or SRA shall explain any differences in risk calculations between HQ and the region. If the risk analysts from the region and HQ have divergent analyses and cannot reach a consensus (unless the differences in the analyses do not affect the decision to approve a NOED), consensus should be reached at the management level before proceeding with a NOED.
- c. Provides risk input to NRR management and the assigned NOED team.

05.17 NRR/DORL Technical Assistant:

- a. Ensures the NRC HQ Operations Center (HOC) has available an up-to-date roster of NRR/DORL plant PMs, NRR BCs (including plant licensing BCs), NRR NOED process experts.

05.18 NRR Office Staff:

- a. Participates in NOED calls.
- b. Validates adverse natural event conditions (if applicable) to the extent practical and provides a basis for determination.
- c. Evaluates the consequences and risks of continued plant operation during degraded conditions.
- d. Provides concurrence for NOEDs that are considered acceptable from a technical perspective.

0410-06 REQUIREMENTS

06.01 General Considerations. The NRC expects to receive NOED requests infrequently. A NOED is a high-priority enforcement function.

In approving a NOED, the NRC recognizes the operating license will be violated, but it is exercising discretion to not take enforcement action for a specified period. Although TS or license conditions may dictate a plant be shut down and cause undesired transients, or refueling activities to be suspended, or plant startup to be delayed, the NRC is under no obligation to approve a NOED. The NRC will approve a NOED only if it is clearly satisfied that such action does not adversely affect public health and safety or the common defense and security. The burden is on the licensee to address the criteria in this guidance and provide a plan demonstrating that any additional risks while operating outside of the TS or license condition have been mitigated. In all cases, the NRC will consider appropriate enforcement actions consistent with the NRC's Enforcement Policy for the root causes that led to the need for the NOED.

The NRC's primary considerations in approving a NOED are (1) the NRC is assured the licensee understands all safety and security concerns when operating outside of its TS or license conditions, and (2) the licensee is implementing a plan to mitigate the additional risks and has communicated that plan to the NRC. The NRC must be satisfied that, during the period of the NOED, additional risks have been mitigated and, therefore, there is no net increase in radiological risk to the public.

However, in addition to no net increase in radiological risk, approved NRC guidance that addresses defense-in-depth or margin-to-safety issues (directly related to the NOED subject) should be considered during evaluation of any NOED request. In all cases, the decision to approve or deny a NOED shall be risk-informed. The risk-informed decision shall not result in more than a minimal increase in radiological risk that does not exceed normal work control levels or the transitional risk associated with compliance to the TS or license condition.

NOED requests shall be considered on a case-by-case basis, taking into account the individual plant circumstances. The staff shall perform an independent risk assessment of the NOED request and consider the licensee's assessment as an input to its decision process, given reasonable time constraints. The NRC's assessment should be a joint effort by the regional SRA and NRR's APOB.

Most NOED requests should be considered for a period of less than 72 hours. The NRC staff will decide whether the requested period is appropriate and has the final authority regarding the actual duration of a granted NOED. NOED requests related to grid instability, other natural phenomena, or public emergencies should be limited to the duration of adverse conditions and should be terminated when conditions improve. If a licensee is requesting a NOED for a period greater than 72 hours, a license amendment request is more appropriate.

The staff shall not permit the licensee to disregard a TS or license condition while the staff considers a request for enforcement discretion. If the licensee cannot provide the staff with an adequate basis and risk mitigation plan before the end of the TS CT, the licensee must take the required actions to comply with the TS while endeavoring to provide the staff with an adequate basis for approving the NOED. In cases involving short completion times or complex issues, the staff may have to act before all the information is available. In such cases, the staff may approve a NOED if the licensee provides a clear basis for the staff to conclude that there will be no adverse effects on public health and safety and that the licensee has satisfied the criteria of this guidance. However, the burden of fully justifying the request for a NOED remains with the licensee. If subsequent information fails to support the initial issuance of the NOED, the NOED shall be terminated (see section 09 of this IMC).

If NRC regulations (e.g. 10 CFR Part 21, "Reporting of Defects and Noncompliance," 10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Power Reactors," or 10 CFR 50.73, "Licensee Event Report System") require a licensee report because of the nonconformance, the licensee must submit that report despite the NRC's approval of a NOED. In no case shall the approval of a NOED relieve a licensee of regulatory or reporting requirements.

If the NRC decides not to approve a NOED request, the licensee must take the action required by the TS or license condition.

NOED requests should not be denied solely because the licensee had prior knowledge that could have prevented the situation, or because the time until the NOED is needed is short because the licensee was not prompt in requesting the NOED, after the situation became known. However, NOEDs shall not be granted for operational expediency. Approving or denying the NOED shall be based on whether approving the NOED will minimize potential safety consequences and operational risks that would occur if the NOED were not granted. Any licensee performance concerns shall be inspected and dispositioned through the baseline inspection program.

A NOED may be granted to allow continued operation, or to extend the shutdown period allowing a more orderly shutdown given the problems associated with the event, or if a degraded emergency preparedness situation causes a violation of a TS or license condition, or

for other TS or license condition circumstances the NRC deems appropriate. In addition, in situations involving public emergencies and grid instabilities, the NRC will entertain NOED requests for relief from actions required by TS or license conditions that licensees anticipate could potentially exacerbate the situation. These preemptive NOED requests should occur very infrequently, and would only involve a natural event NOED.

06.02 Types of NOEDs. There are two types of NOEDs: (1) “regular” NOEDs, and (2) “natural event” NOEDs. Natural event NOEDs may be granted during severe-weather conditions, pandemic conditions, or other natural phenomena. In addition, natural event NOEDs may also be granted during public emergencies unrelated to natural events. All NOED requests must be for unanticipated situations involving temporary noncompliance with a TS or license condition, when an amendment is not practical. Regular NOEDs are appropriate when forced compliance with the license would involve plant-related risks because of an unnecessary transient that may affect the radiological health and safety of the public. Natural event NOEDs involve general (as opposed to only radiological) public health and safety considerations (i.e., the need for power or grid stability). Regardless of the initiating cause for a NOED request, if the NOED is required to avoid an unnecessary transient that would affect radiological health and safety of the public, it should be considered as a regular NOED (e.g., severe hot weather conditions result in exceeding the TS temperature limit for the ultimate heat sink (UHS)). In all circumstances, the NRC’s decision to forego enforcement action is discretionary.

- a. Regular NOEDs. Regular NOEDs are appropriate when compliance with the TS or license condition would involve unnecessary transients or one of the other situations listed in Section 03.03 of this guidance.

Regular NOEDs minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts, or eliminate testing, inspection, or system realignment that is inappropriate for the particular plant conditions.

Requests for enforcement discretion shall provide a risk-informed basis demonstrating that continued operation is essentially within a plant’s normal work control levels. Normal work control levels, expressed in terms of ICCDP and LERF probability, are specified in NRC and industry guidance on configuration risk management (e.g., Regulatory Guide 1.182, “Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants,” issued May 2000, and Section 11 of NUMARC 93-01). Plant-specific transition and shutdown risk models may be used to additionally support a NOED request.

The following NOED criteria are applicable for various plant conditions:

1. For a plant in power operation, granting a NOED shall result in no net increase in radiological risk and meet one of the following:
 - (a.) avoid unnecessary transients as a result of compliance with the TS or license condition and thus minimize potential safety consequences and operational risks;
 - or

- (b.) avoid testing, inspection, or system realignment that is inappropriate for the particular plant conditions (e.g., an activity that may initiate an unnecessary transient).
- 2. For plants in a shutdown condition, a NOED shall reduce shutdown risk by avoiding testing, inspection, high-risk evolutions, or system realignment that is inappropriate for the particular plant conditions, when adherence to the TS or license condition does not provide an overall safety benefit or may be detrimental to safety in the particular plant condition.
- 3. For plants attempting to start up, NOED requests are more difficult to justify than those for operating plants because delaying startup does not usually leave a plant in a condition in which it could experience undesirable transients. The NRC may approve NOEDs for plants attempting to start up only when the staff concludes the licensee has demonstrated one or more of the following:
 - (a.) The equipment or system does not perform a safety function in the mode in which operation is to occur (e.g., a TS that requires the equipment to be operable in a mode the UFSAR does not require).
 - (b.) The safety function performed by the equipment or system, in the mode in which operation is to occur, may have only marginal safety benefit and the likelihood of an unnecessary plant transient increases if the plant remains in the current mode.
 - (c.) The TS or other license conditions would require a test, inspection, or system realignment that is inappropriate for the particular plant conditions and adherence to the TS or license condition does not provide a safety benefit or may be detrimental to safety in the particular plant condition.
 - (d.) The testing of repairs or modifications would require unnecessary mode changes.

The licensee's NOED request must specifically state which of the above criteria apply and the licensee must satisfy those criteria. If the licensee has not satisfied any of the criteria, the NRC will not approve a NOED, and the licensee must comply with the license requirements until the NRC has approved a license amendment request. The burden is on the licensee to fully justify the need for the NOED, and to provide evidence that additional risks have been mitigated.

- b. Natural Event NOEDs. In unusual situations such as severe weather, grid instability, pandemic conditions, or other natural phenomena, or during public emergencies unrelated to natural events, a licensee may request a natural event NOED. When these conditions exist, a natural event NOED may be appropriate if compliance with TS or specific license conditions could worsen the current or pending non-radiological public health and safety emergency. Such situations are expected to occur rarely. During these conditions, a government entity (such as the U.S. Department of Homeland Security) or a responsible independent entity (such as a regional power authority or RC) should

determine that challenges in delivering power together with potential, non-radiological adverse effects to public health and safety constitute an emergency. It is the licensee's responsibility to contact the government agency or independent entity and obtain a statement to this effect. The NRR plant PM shall expeditiously inform the Commission that a natural event NOED has been requested, and shall update the Commission after it has been granted or denied. The NRC plant PM shall also notify OE that a natural event NOED has been granted, so that OE can issue a same-day Enforcement Notification (EN) to the Commission.

The staff may only grant a natural event NOED if all of the following conditions are met: (a) the public health and safety or common defense and security of not operating is balanced against the potential radiological or other hazards associated with continued operation, (b) safety will not be affected unacceptably by exercising this discretion, and (c) there will be no net increase in radiological risk after the licensee has implemented compensatory measures.

The determination that radiological public health and safety will not be unacceptably affected is qualitative and must be based on an assessment of how continued operation, with the potential for the interruption of power delivery resulting from the natural event, would affect public health and safety, versus how the cessation of operations would affect public health and safety. The licensee's request must be sufficiently detailed to allow the staff to make this determination. Risk insights, informed judgments, and quantitative analysis, may be used to support the determination.

The licensee's NOED request must specifically state that all of the criteria described for a natural event NOED have been satisfied. In addition, the request must include the government agency or independent entity requesting the licensee to maintain power to the grid, if applicable, including the individual contact name and telephone number. If the licensee has not satisfied all of the criteria, the NRC will not approve a NOED, and the licensee must comply with the license requirements until the NRC has approved a license amendment request under 10 CFR Part 50.

During pandemic conditions, the licensee may determine that there are plant-specific impacts on staffing that have occurred at its nuclear station and, absent enforcement relief, would be required to shut down. These impacts would preclude normal operation in accordance with the license. When these conditions exist, a natural event NOED may be appropriate.

06.03 NOED Process. Processing NOEDs involves considerations including: (a) time for the licensee and the NRC to engage, (b) oral and written requests, (c) authorizations, (d) amendments, (e) natural event NOEDs, (f) duplicate NOEDs, and (g) authority to approve NOEDs.

- a. Engagement of Licensee and the NRC. Although the NOED process addresses unanticipated, time-critical conditions, the request for a NOED is often predictable. Periodic communication between licensees and the staff, such as routine calls between licensees and their NRR plant PMs, and plant status calls between the region and NRR should identify situations in which licensees might request a NOED. In addition, resident

inspectors, NRR plant PMs, and regional DRP BCs shall promptly discuss situations that may result in a licensee's request for a NOED.

A licensee should be encouraged to engage the staff immediately upon identifying a situation that might warrant a request for an emergency license amendment or a NOED. This engagement provides an early opportunity for the licensee and staff to discuss the situation and for the licensee to determine whether it should request a NOED rather than an emergency license amendment. Whenever possible, licensees should request an emergency license amendment rather than a NOED. An amendment may not be required if the NOED request involves a non-recurring noncompliance and only involves a single request for extending the TS allowed outage time for an inoperable component and is for a period of less than 72 hours. The NRC recommends that preliminary teleconferences held with a licensee and NRC staff to discuss the status of a plant condition or situation – not to formally request a NOED – be made through a recorded line.

In general, the staff will not consider a NOED request if more than 72 hours of TS completion time remain at the time the situation is identified. Emergency license amendment requests are more appropriate in such situations. The NRC staff will decide whether the requested period is appropriate and has the final authority regarding the actual duration of a granted NOED.

As soon as the NRR plant PM is notified of a potential NOED, the plant PM shall request a TAC to allow the proper tracking and accounting of NRC HQ resources contributing to the support of the NOED. When a natural event NOED is requested, the plant PM shall also inform the OEDO and Commission by expeditiously submitting a Daily Note in accordance with OEDO Procedure-0350.

- b. Requests and Processing. Typically, licensees first request NOEDs orally. Routine communications between the licensee and the NRC and within the NRC usually provide adequate advance notice of potential NOED requests so the regional staff and the NRR plant PM can mobilize appropriate technical and project resources to participate in NOED teleconferences held to discuss and promptly process NOED requests. It is the responsibility of the regional DRP BC to organize all required NRC regional personnel, and the NRR plant PM to organize all required NRC HQ personnel.

No further action is required if a preliminary teleconference is held to discuss conditions that indicate a potential NOED, but a NOED turns out to be unnecessary. The NRR plant PM and the region shall close any associated TACs or charge numbers that were opened for the NOED. However, if the licensee verbally requested a NOED, refer to section 08.03 of this guidance.

Normally, the staff shall not grant a NOED based on a recurring request (the same licensee under similar circumstances therefore not unforeseeable). In such cases, the licensee should submit a license amendment request.

The staff may grant a NOED orally, but it must provide the licensee with a written confirmation letter (see section 08.02) within 2 working days of receiving the licensee's written request.

1. Teleconferences (Conference Calls). All licensee-staff teleconferences conducted to discuss formal NOED requests shall be made through the NRC HOC recorded telephone line at 301-816-5100. This recorded line provides a record of the discussion and a basis for future verification of its consistency with the licensee's follow-up written request.

All teleconferences should be requested by the region to the HOC. The duty Headquarters Operations Officer (HOO) shall organize and control the conference bridges, such that one bridge can be dedicated to the NRC for internal discussions, one bridge can be dedicated to the licensee, and both bridges can be connected or disconnected by the HOO. An internal NRC teleconference shall be held first, followed by a licensee-staff NOED teleconference. One method is as follows: 1) Hold an internal NRC discussion of the potential NOED request and known circumstances, 2) connect the bridge lines and discuss the type of NOED being requested and the TS or license condition that will be violated with the licensee, 3) separate the bridge for an internal NRC discussion to determine if NRC staff have any questions, 4) go back to the licensee for a discussion of how the licensee meets the criteria of subsection 0410-07 of this IMC, 5) separate the bridges and allow the NRC to determine if the NOED is to be granted or if additional information is needed, then 6) reconnect the bridges to close with the licensee. The regional DRP BC, assisted by the NRR plant PM, will ensure the teleconferences are coordinated and that all appropriate regional and HQ personnel are attending.

2. Staffing. At a minimum, the following personnel (or their delegates) shall be included in the NOED request review: the Regional DRP Director, the applicable DRP BC, a regional SRA, the plant specific Senior Resident Inspector (SRI), the NRR/DORL Director, the applicable NRR/DORL BC, the plant specific NRR plant PM, an NRR/Division of Engineering (DE) BC (as appropriate), an NRR/DIRS BC (as appropriate), an NRR/Division of Safety Systems (DSS) BC (as appropriate), an NRR/DRA BC (as appropriate), an NRR risk analyst or SRA, and the NRR NOED Process Expert. Appropriate additional regional and HQ staff will participate, as needed, to address specific areas of expertise. For natural event NOEDs, technical reviewers from various disciplines in NRR and in the regions will likely be needed to support the teleconference. During pandemic conditions affecting the NRC, regional staff from any region may support the event.

If one or more NRC participants are not available for the teleconference and delegates or replacements cannot be identified, the DRP Director (or delegate) will make the decision whether to proceed with the NOED teleconference without those participants. This decision shall be made after consultation with the NRR/DORL Director (or delegate).

During natural event NOED considerations, staffing the NRC team may come from various regions or NRR plant support staff not assigned to the specific plant. The RA

(or delegate) shall ensure appropriate staff is available to consider the NOED request. This may require less than recommended staffing, and the determination of whether available staff is sufficient to make the NOED determination is at the sole discretion of the RA (or delegate) after consultation with the NRR/DORL Director (or delegate).

3. Off-Hours Staffing. A licensee might request a NOED during off business hours because of emergent and unanticipated circumstances (e.g., inoperable equipment, etc.) with associated short TS completion times. In the unlikely event that a licensee cannot contact either its resident inspector or its NRR plant PM (or his or her respective management), the licensee shall call the HOC at 301-816-5100 to request a NOED teleconference with staff. In such an event, the HOO will contact the licensee specific DORL PM and the regional DRP BC so the NOED request is considered in a timely manner. The DORL technical assistant will ensure the HOC is provided with an up-to-date roster of NRR plant PMs, NRR BCs (including plant licensing BCs), and NRR NOED process experts. If the HOO is unable to place the licensee in contact with any of the project-specific DORL staff, the HOO will contact the DORL Deputy Director or Director.

If a NOED request occurs at a time when normal staffing is not present in the NRC offices (i.e., after normal working hours, pandemic conditions, etc.), staff from remote locations (i.e., home) shall process the NOED request. If normal staffing is not available, the NRC expects regional or HQ staff or both to be available to assist in processing the request. It is unlikely that a pandemic would affect the entire NRC given the geographic separation between the various regions and HQ. As required, the region and HQ shall use the emergency response team to respond.

- c. Verifying Licensee Assertions. Before approving a NOED, the regional DRP BC, the SRI, and the NRR plant PM should verify, to the extent practicable, the licensee's oral assertions, including the likely cause and compensatory measures, and should verify the NOED request is consistent with the staff's policy and guidance. Methods of verification include but are not limited to: (1) independent reviews of licensee records, (2) physical observations and inspections, and (3) reviews of docketed information.

If the NRC staff cannot make all of the verifications before the NOED is granted, the verifications should be done subsequent to the granting of the NOED as soon as time permits. A subsequent inspection report shall document the results of the verification activities.

When a NOED is granted, the responsible SRI shall open an URI associated with the NOED.

- d. Natural Event NOEDs. For natural event NOED requests, the regional and HQ staffs should make reasonable efforts to assess the nature of the emergency in an expeditious manner. A teleconference should be held as soon as possible among senior licensee management, and regional and NRR staffs. If the NOED request involves a government or independent entity requesting the licensee remain operational, the licensee shall have the entity on the teleconference to answer staff questions.

After the teleconference, the licensee must promptly submit (within 3 hours) a written request documenting all the bases, justifications, commitments, the requesting government or independent entity (if applicable), and other considerations and conditions discussed and agreed upon in the teleconference.

The NRR plant PM shall expeditiously submit an EDO Daily Note in accordance with OEDO Procedure-0350 for input to the OEDO and Commission within 12 hours of the licensee's request for a natural event NOED.

1. Pandemic-Related NOEDs. A pandemic-related NOED occurs when a licensee requests a NOED during a time when the NRC has approved the licensee entering in or operating under its pandemic plan.

A likely scenario is that the licensee's staff is sick, and the licensee cannot complete surveillance requirements. Therefore, the licensee desires a NOED to continue to operate. However, in all likelihood, the licensee will not know how many more of its staff will be unavailable or when the surveillance will be completed. To enable a reasoned approach to pandemic-related NOEDs, including full consideration of any safety-margin limitations and unnecessary plant transients that may be induced, the NRC staff must ensure due consideration of each request. Since the licensee is entering in or operating under its NRC approved pandemic plan, there must be justification the condition is unanticipated and sufficient reasoning for a licensee to request a natural event NOED.

However, a generic decision to relax staffing requirements during a pandemic cannot be justified. The licensee must still meet all 10 CFR Part 50 and Part 73 staffing requirements. The licensee must demonstrate that enough non-licensed operators would be available to perform actions required to mitigate certain core damage scenarios. Some plants are highly dependent on operator actions, including actions outside of the control room, in the event of transients and accidents. The licensee must consider the risk impact of reducing shift-manning levels. Reduced staffing levels could increase initiating event frequencies, increase latent human errors, and increase human error probabilities following a transient or accident. Reduced staffing may preclude responding to certain events that depend on ex-control room operator actions.

If a licensee is operating under its NRC approved pandemic plan and requests a NOED, the NRC staff shall consider a reasonable deadline for the licensee to submit a written NOED request and other follow-on documentation. The NOED timelines may not apply. Licensee staffing shortfalls may require relaxation of written submission deadlines.

During a pandemic, the NRC may not be able to fully staff the NOED approval decision-making body. Therefore, consideration must be given as to a detailed and in-depth review of the NOED request. Each NOED request, when reviewed and considered by a reduced NRC staff, must be followed by a license amendment request to ensure proper tracking and a detailed and in-depth review by NRC staff.

This will ensure NRC staff has the opportunity to provide insights that may not have been discussed during the decision-making process.

To meet all essential functions and maximize use of critical resources, the staffing listed below represents the absolute minimum NRC staff (six people) required to disposition a NOED request when the NRC is affected by a pandemic.

- (a.) Either a regional Senior Executive Service (SES)-level manager or an NRR SES-level manager with plant licensing experience. A regional SES-level manager is preferred to maintain regional decision-making authority. It is preferable, but not required, to have an SES-level manager from both the region and NRR. The approval authority may not be delegated below the SES level.
- (b.) A regional DRP BC.
- (c.) An SRA or NRR risk analyst. The SRA or risk analyst may be from the affected region, any other region, or NRR. It is always preferred to have both a regional risk analyst and an NRR risk analyst on the team.
- (d.) An NRR/DORL plant PM. This PM will help coordinate communications, and must track both the NOED process and the follow-up license amendment.
- (e.) A technical reviewer knowledgeable in the appropriate discipline from a region or NRR.
- (f.) A regional inspector. It is highly desirable, but not required, to have the Senior or Resident Inspector from the affected plant. However, this may be a SRI or RI from another plant, or a region-based power reactor plant inspector.

All efforts shall be made to fully staff the NOED request process. The SES managers make the final decision as to what support is needed on a case-by-case basis. Each NOED must be considered individually. The staff will not approve the NOED request unless clearly convinced the standards in this guidance have been met.

NOED risk analysis associated with equipment or hardware malfunctions is generally more complex (especially under the time constraints of a NOED evaluation) than for surveillance requirements, in which compliance may be more directly related to reduced staffing. Accordingly, equipment-related requests shall still require consideration by the broader set of staff participants required for regular NOED consideration. Although the hallmark of a pandemic is reduced staffing, it may be surveillance requirements that are the likely subject of pandemic-related NOED requests.

2. Grid Instability NOEDs. Continued safe operation of NPPs during a grid instability event may play a major role in maintaining stable and reliable electrical power supply systems, thereby providing necessary reserve power if there are major losses at other generating facilities. The exercise of enforcement discretion may support a licensee request to keep the plant in operation, if the licensee has determined that radiological

safety and security will not be unacceptably affected and there will be no net increase in risk, to help maintain electrical grid stability and reliability.

When a licensee requests a grid instability NOED, the reasons may be severe weather, or other issues and events. For any grid instability NOED, the licensee shall have the actual grid information available for current weather conditions and predicted weather conditions for the next 48 hours or the period of the NOED, whichever is greater. The NRC staff will verify the information for accuracy and planned contingencies through established contacts at the U.S. Department of Energy, NERC, FERC, the RC, and the Local System Transmission Operator or Independent System Operator (ISO). The NRC staff will only consider a grid instability related NOED, if: a) the grid is actually stressed, and b) load management will be implemented at the first contingency, and c) non-radiological public health and safety will be a concern if the nuclear unit was required to shutdown. Multiunit sites with a common issue requiring a NOED will be similarly evaluated. However, the NRC's responsibility is to ensure safe and secure radiological operation of the NPP, not to maintain a stable power supply to the grid.

Before approving a grid instability NOED, the NRC must be assured the licensee has exhausted all opportunities for purchasing replacement power, and the NOED shall not last any longer than replacement power becomes available.

The NRC staff needs to ensure that it has a clear understanding of the licensee's position on what constitutes a degraded grid condition and at what grid condition the licensee will no longer meet the NOED criteria.

To ensure that all RCs clearly understand potential and actual energy emergencies in the interconnection, NERC has established three levels of Energy Emergency Alerts. The RCs will use these terms when explaining energy emergencies. An Energy Emergency Alert is an emergency procedure.

Following is the basic definition of the NERC Emergency Alert Levels for the grid. (Standard EOP-002-3 — "Capacity and Energy Emergencies" August 5, 2010).

NERC Alert Level 1 — All available resources in use

Balancing authority, reserve sharing group, or load serving entity foresees or is experiencing conditions where all available resources are committed to meet firm load, firm transactions, and reserve commitments, and is concerned about sustaining its required operating reserves

NERC Alert Level 2 — Load management procedures in effect

Balancing authority, reserve sharing group, or load serving entity is no longer able to provide its customers' expected energy requirements, and is designated an energy deficient entity. Actions taken include the interruption of non-firm end use loads in accordance with applicable contracts. Before declaring an Alert 3, the energy deficient entity must make use of all available resources including all available generation units that are on line and all power purchases made regardless of cost.

NERC Alert Level 3 — Firm load interruption imminent or in progress

Firm load is the highest quality (priority) service offered to customers under a filed rate schedule that anticipates no planned interruption. Major load management is in effect.

With respect to electrical power required for radiological safety, it is through the combination of the plant's onsite power systems (diesel generators) and the offsite electric power grid that provide reasonable assurance of safe NPP operation. Many NPPs have identified specific transmission line configurations that must be maintained as the underlying assumption to ensure the availability of the grid for safe operation. During grid instability situations, NRC staff must carefully consider the risk inherent with the potential loss of the grid.

Although some public emergencies, such as terrorist attacks, are not natural events, the licensee and the NRC may have to respond as if the situation were a natural event. Regardless if the attack is directed against the licensee, against the grid, or against another power plant, the licensee may be requested to continue to provide power during such a public emergency.

The NRC recognizes that, despite licensees' efforts, power reactors and the electrical grid may be susceptible to terrorist attacks including physical attack and cyber attacks. The attack may occur during a time a licensee may be in potential noncompliance with TS or license conditions and requiring shutdown. Such shutdowns could exacerbate localized or widespread power outages. Accordingly, continued safe operation of NPPs during a terrorist attack may be necessary to help in maintaining stable and reliable electrical power.

- e. Technical Specification Improvements. The TS improvement process provides for an orderly consideration of appropriate changes to the STS. It can reasonably be anticipated that, during the period in which a TS improvement is being reviewed (or when a licensee has submitted a license amendment change request), circumstances may arise in which the deficiencies the proposed TS improvement are addressing may warrant consideration for enforcement discretion on a plant specific basis. The NOED decision-making process shall consider the plant specific circumstances presented in the NOED request, however, the Technical Specification Branch must be consulted on any submitted TS improvements related to the NOED request. The licensee shall provide the NRC NOED approval decision-making body with the submitted TS improvement information.

If the licensee was denied an emergency TS change request for the same issue and the technical bases for the request have not changed, a NOED should not be granted. The technical bases review of a TS change request ensures the quality of the PRA must be compatible with the safety implications of the requested TS change and with the PRA role in justifying the request.

- f. Duplicate NOEDs. Several plants in the same or different regions might request NOEDs simultaneously to address common conditions (e.g., a vendor advisory letter, pandemic conditions, or grid instability conditions, etc.). On such occasions, the regions and NRR

shall coordinate closely to avoid potential duplication of effort or inconsistent approaches or both and to identify and obtain any special assistance or expertise needed. On such occasions, the NRC will approve plant-specific NOEDs in accordance with the guidance in IMC 0410. The NRR technical BC(s) shall be included in all discussions and decisions to improve consistency in staff determinations relating to the NOED requests, approvals, root cause evaluations and enforcement actions.

- g. Authority to Approve NOEDs. The authority to approve a NOED is assigned to the RA, who may delegate the authority to the Deputy Regional Administrator, or DRP Director or DRP Deputy Director. Before approving a NOED, the region shall obtain the concurrence of NRR management during the NRC-specific conference calls. The NRR DORL Director (or delegate) is authorized to provide the concurrence for NRR, after consulting with appropriate NRR staff and management and will designate any additional NRR or other Program Office concurrences deemed necessary.
- h. Compensatory Actions (Compensatory Measures). The risk of certain plant configurations can be reduced by crediting an enhanced licensee readiness to respond to initiating events. Existing at-power risk models do not credit all possible compensatory measures. Therefore, the risk calculated for certain configurations may be higher than it would be if credit were taken for all compensatory measures. Two kinds of compensatory measures are of interest: measures aimed at preventing challenges to the functionality affected by the unavailable equipment, and measures aimed at promoting the reliability and availability of trains that are redundant to the unavailable equipment. Licensees should provide quantitative analyses and cite proposed compensatory measures. Sufficient detail about the compensatory measure(s) should be provided, as well as what changes in the model were made to demonstrate the criterion of "no net increase in risk" has been satisfied. For example, the licensee may not have any additional risk significant equipment out of service during the period of non-compliance, or, it may not perform any discretionary maintenance on any risk significant equipment currently in service. The compensatory actions must result in a meaningful decrease in risk. Compensatory actions must accomplish at least two of the following objectives to be considered acceptable by the NRC:
 - 1. prevent initiating events,
 - 2. assure a low probability of failure of redundant equipment / components,
 - 3. assure recovery.
- i. NOED Exit Criteria. The NRC shall approve the duration of any requested NOED, and the licensee shall comply with all applicable TS and license conditions upon exiting the NOED.
- j. License Amendments. Within 4 working days of the NRC's oral granting of the licensee's NOED request, the licensee must submit a request for a follow-up license amendment under 10 CFR Part 50, unless the staff agrees, before it approves the NOED, that a follow-up license amendment is not required. A license amendment should follow all NOED approvals to ensure an open process for all stakeholders and proper management

of information. The staff's agreement that a follow-up license amendment is not required shall be documented in the written NOED request and in the NOED approval letter.

If the NRC staff determines that the condition leading to the request for a NOED could reoccur, a license amendment is required. If a licensee is requesting enforcement discretion for more than 72 hours, and the NRC staff has at least 3 working days to review and consider an amendment request, an emergency amendment request should be submitted. If the licensee is requesting enforcement discretion for no more than 72 hours, an exigent or regular amendment request should be submitted.

Generally, licensees should request permanent, rather than temporary (or one-time), license amendments, either instead of or as a follow-up to a NOED. The intent is to institute permanent solutions that will minimize the likelihood of recurrence of the violation. However, temporary amendments may be appropriate for certain situations. Examples of temporary amendments include the following:

1. amendments whose acceptability relies on complex compensatory actions that are not practical on a permanent basis,
2. risk-informed amendments whereby their acceptability cannot be demonstrated on a permanent basis, and
3. amendments that have been requested and approved until a supportable permanent amendment request can be submitted and approved.

The staff cannot require the licensee to request a permanent amendment. If requesting a temporary amendment, the licensee should discuss its justification with the staff during the formal NOED request conference call or before submitting an amendment request that justifies why the requested amendment should be temporary. If the staff does not agree with the licensee that a temporary amendment, rather than a permanent amendment, will solve the violation, but agrees the request for a temporary amendment is technically justified, the staff's safety evaluation will document: the justification for the temporary nature of the amendment is insufficient; that subsequent requests for the same condition might not meet 10 CFR Part 50 criteria; and the staff may consider the recurrence of the condition a result of inadequate corrective action in accordance with Appendix B to 10 CFR Part 50,.

The letter issuing a follow-up amendment shall identify the NOED superseded by that amendment. The NRR plant PM shall ensure that an electronic copy of the letter issuing the follow-up license amendment is sent to the OE Internet Web master by e-mail to "OEWEB Resource" (file MUST be the FINAL agency document).

0410-07 STAFF EVALUATION

The following requirements detail the staff analysis of a licensee's request for a NOED. Attachment 1 provides a "NOED Checklist" for the HQ and Region staff. The licensee's oral and written requests for a NOED must:

- a. Specifically address what type of NOED is being requested (regular or natural event), which of the NOED criteria for appropriate plant conditions specified in subsection 03.03 of this guidance is satisfied, and how the licensee satisfied those criteria. (also reference subsection 06.02 of this IMC)
- b. Provide a description of the TS or other license conditions that will be violated, and, if applicable, state that adhering to the license would cause an unnecessary transient. This description shall include the time remaining before the TS or license condition will be violated. When a "regular" NOED is requested, the licensee must show that granting the NOED request would avoid an unnecessary transient.
- c. Provide a description of the circumstances, including: likely causes; the need for prompt action; the action taken to avoid the need for a NOED; and any relevant historical events. The historical events must include as a minimum, any other similar events at the plant, the last maintenance performed on the equipment or similar equipment, any outstanding amendment or TS change requests related to the NOED, and the last NOED request from the plant.
- d. Provide information that shows the licensee fully understands the cause of the situation that has led to the NOED request. The licensee must understand and detail all safety and security concerns when operating outside of its TS or license conditions.
- e. Detail the proposed course of action to resolve the situation, so enforcement discretion is no longer required.
- f. Explain that the resolution itself will not result in a different, unnecessary transient.
- g. Explain that the licensee did not have time to process an emergency license amendment, or that a license amendment is not needed.
- h. Describe the condition and operational status of the plant, including safety-related equipment out of service or otherwise inoperable, and nonsafety-related equipment that is degraded or out of service that may have risk significance and that may increase the probability of a plant transient or may complicate the recovery from a transient or may be used to mitigate the condition.
- i. Request a specific time period for the NOED, including a justification for the duration of the noncompliance. The licensee shall include information that shows its proposed course of action has a high likelihood of being completed within the proposed NOED period. The licensee must show the requested time for the NOED is directly related to the time to resolve the situation.

- j. Detail and explain compensatory actions the plant has both taken and will take to reduce the risk associated with the specified configuration. All compensatory actions must be completed before the NOED CT begins. Compensatory measures used to reduce plant vulnerabilities shall focus on both event mitigation and initiating event likelihood. The objectives are to achieve the following:

1. reduce the likelihood of initiating events, and
2. reduce the likelihood of the unavailability of trains redundant to equipment that is out-of-service during the period of enforcement discretion, and
3. increase the likelihood of successful operator recovery actions in response to initiating events.

An example is a situation in which a motor-driven auxiliary feedwater (AFW) pump has failed and risk insights have established that plant transient initiators may be risk-significant events because the plant has no primary feed-and-bleed capability and only limited secondary feed capability is available. As a compensatory measure during the period of enforcement discretion, the licensee may defer non-essential surveillances or other maintenance activities in which human error contributes to the likelihood of a plant trip and subsequent demand on the remaining AFW pumps. Another example of appropriate compensatory measures would be actions that increase the likelihood of success in the manual alignment or start-up of equipment in response to an initiating event (e.g., positioning operators locally at equipment, "just-in-time training", or additional contingency plans).

- k. Discuss the status and potential challenges to offsite and onsite power sources, including any current or planned maintenance in the distribution system and any current or planned maintenance to the emergency diesel generators. The licensee must identify any specific transmission line configurations that must be maintained to ensure the availability of the grid for safe operation of the plant.
- l. Include the safety basis for the request and an evaluation of the safety significance and potential consequences of the proposed course of action. To the extent practicable, the licensee should address the quantitative and qualitative aspects noted below. The numerical guidance for acceptance was established to augment qualitative arguments that continued operation of the plant during the period of enforcement discretion will not cause risk to exceed the level determined acceptable during normal work controls and, therefore, there is no net increase in radiological risk to the public. For licensee provided quantitative risk analysis, the licensee shall provide the effects on LERF. The following information should be provided to support this evaluation:
 1. Use the zero maintenance PRA model to establish the plant's baseline risk and the estimated risk increase associated with the period of enforcement discretion. For the plant-specific configuration the plant intends to operate in during the period of enforcement discretion, the ICCDP and ICLERP should be quantified and compared with guidance thresholds of less than or equal to an ICCDP of 5E-7 and an ICLERP of 5E-8. These numerical guidance values are not pass-fail criteria. For the degraded

case with the subject equipment out of service, the model should reflect, as best as possible, current equipment unavailability states (i.e., if other equipment is unavailable because of T&M, this should also be reflected in the analysis). This risk calculation should not be limited to the specific TS relief in question, but rather, the total risk of continued operation for the specific configuration of the plant.

2. Discuss the dominant risk contributors (cut sets or sequences or both) and summarize the risk insights for the plant-specific configuration the plant intends to operate in during the period of enforcement discretion. This discussion should focus primarily on risk contributors that have changed (increased or decreased) from the baseline model because of the degraded condition and resultant compensatory measures, if any.
 3. Discuss how the compensatory measures are accounted for in the PRA. These modeled compensatory measures should be correlated, as applicable, to the dominant PRA sequences identified in items 1 and 2 above. In addition, other measures not directly related to the out-of-service equipment may also be implemented to reduce overall plant risk and, as such, should be explained. Compensatory measures that cannot be modeled in the PRA shall be assessed qualitatively.
 4. Discuss the “extent of condition” of the failed or unavailable component(s) to other trains or divisions of equipment and the adjustments, if any, which were made to the related PRA common cause factors to account for potential increases in their failure probabilities. The method used to determine the extent of condition shall be discussed. It is recognized that a formal root cause or apparent cause is not required because of the limited time available in determining the acceptability of a requested NOED. However, a discussion of the likely cause shall be provided with an associated discussion of the potential for common cause failure.
 5. Discuss “external event risk” for the specified plant configuration. An example of external event risk is a situation in which a reactor core isolation cooling (RCIC) pump has failed and a review of the licensee’s Individual Plant Examination of External Events or full-scope PRA model identifies that the RCIC pump is used to mitigate certain fire scenarios. Action may be taken to reduce fire ignition frequency in the affected areas and to reduce human error associated with time-critical operator actions in response to such scenarios, and to ensure fire protective and corrective measures have been taken.
- m. Demonstrate that the NOED condition, along with any compensatory measures, will not result in more than a minimal increase in radiological risk, either in a quantitative assessment that risk will be within the normal work control levels (ICCDP less than or equal to $5E-7$ and/or ICLERP less than or equal to $5E-8$) or in a defensible qualitative manner. Any increase in risk shall not exceed the transitional risk (unnecessary transient) associated with TS or license condition compliance.
 - n. Discuss forecasted weather and pandemic conditions for the requested NOED period and any plant vulnerabilities related to weather or pandemic conditions.

- o. Include the basis for the licensee's conclusion the noncompliance will not create undue risk to public health and safety.
- p. Include the basis for the licensee's conclusion the noncompliance will not involve adverse consequences to the environment.
- q. Discuss the capability of the UHS.
- r. Include a statement that the facility organization that normally reviews safety issues has approved the request (Plant Onsite Review Committee, or its equivalent).
- s. Make a verbal commitment that the licensee will submit the written NOED request within 2 working days and a follow-up license amendment request within 4 working days following the staff's verbal approval of the NOED. NRC's approval of a NOED means that exigent circumstances exist. However, the licensee's amendment request must describe and justify any exigent circumstances (see 10 CFR 50.91(a)(6)). If the staff agrees during the conference call that a follow-up amendment request is not required, the licensee shall state this in the written NOED request. If the licensee intends to propose a temporary amendment, the licensee's amendment request shall include justification for the temporary nature of the request.
- t. In addition to items a thru s above, the licensee must provide the following information for a natural event NOED:
 - 1. List the name, organization, and telephone number of the official in the government or independent entity who made the emergency determination, if applicable. If deemed necessary, the staff may contact the appropriate official to independently verify the information the licensee provided before making a NOED determination.
 - 2. Include details of the basis and nature of the emergency including, but not limited to, its effect on the following:
 - (a.) on-site and off-site emergency preparedness,
 - (b.) plant and site ingress and egress,
 - (c.) off-site and on-site power sources,
 - (d.) plant security,
 - (e.) grid stability, and
 - (f.) actions taken to avert or alleviate the emergency situation (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling loads, or shedding interruptible industrial or non-emergency loads).

3. Identify and discuss the potential consequences of compliance with existing license requirements (e.g., plant trip, controlled shutdown).
4. Discuss the potential adverse effects on public health and safety from enforcing compliance with specific license requirements during the emergency.
5. Discuss the impact of the emergency on plant safety, including any limitations of the UHS.
6. For a grid instability NOED, assure the NRC that all reasonable opportunities for purchasing replacement power have been exhausted, and the NOED shall not last any longer than replacement power becomes available, if applicable.

0410-08 DOCUMENTATION

08.01 Written Request. A licensee typically first requests a NOED orally, describing the information required by the staff (section 0410-07 of this IMC). During an oral request, the NRC must have sufficient information to reach the same conclusions as it would for a written submittal. The follow-up written request must confirm the information the staff relied upon in arriving at its decision to approve the NOED. If the information provided in the written request is substantially different from the information provided in the oral request, the staff will terminate the NOED and consider enforcement actions.

The licensee must submit a written request within 2 working days of an oral request for a regular NOED, and within 3 hours of an oral request for a natural event NOED. (Because the staff is required to expeditiously inform the Commission of its approval of a natural event NOED, the licensee must provide a written NOED request within 3 hours of the oral request.). The licensee shall send its request by facsimile or e-mail to the DRP Director and the NRR Plant Licensing BC, and the signed original to the Document Control Desk.

08.02 Approving the NOED. When approving a NOED, the region shall document its evaluation of the licensee's request in a letter to the licensee. The staff's letter documenting the NOED should be self-standing, address applicable items, and demonstrate that issuance of the NOED is consistent with NRC policy and guidance.

The letter approving the NOED shall clearly specify the TS or license condition in violation, which of the licensee's reasons the staff accepted in reaching its decision, and shall specify the NOED criterion (subsection 03.03 of this IMC) that is satisfied. The sequence of events in the staff's letter shall be clear and include the following:

- how and when the licensee first informed the NRC of a potential NOED request,
- how and when the licensee first requested enforcement discretion,
- the length of the NOED completion time, including any surveillance or testing interval, starting at the end of the TS completion time,

- when the allowed time will end or has ended,
- when the NOED was orally granted,
- the date of the licensee's follow-up written request,
- if the NOED was terminated prior to issuing the staff's letter,
- the date and time the NOED was actually terminated, and
- when the licensee's follow-up license amendment request will be or was submitted.

In addition, the letter shall include staff verification of the consistency between the licensee's oral and written requests and the identity (by name and title) of the key NRC staff who participated in the NOED evaluation and approval.

If the staff and licensee were unable to agree on whether the follow-up amendment should be permanent, the staff shall document this information in the NOED letter and shall include a statement that, if a temporary amendment is proposed, the NRC may consider the recurrence of the situation a result of ineffective corrective action and may find that subsequent requests for enforcement discretion related to the same situation may not be granted.

08.03 Unneeded or Denied NOEDs. Once a NOED is requested, either orally or in written draft or final written form, the staff must follow-up with a letter documenting its decision and the bases for its decision even if it denies the NOED request or the NOED turns out to be unneeded.

If a NOED is authorized orally but the licensee subsequently determines that no violation of the license will occur and thus the NOED is not needed, the licensee and staff shall still follow-up with appropriate documentation. In such cases, the licensee must submit a letter within 2 working days, documenting its oral request, the NRC's oral approval, and the circumstances that led to the determination the NOED is no longer needed.

08.04 Informing OEDO and Commission. Upon approving any NOED, the NRR plant PM shall submit a Daily Note in accordance with OEDO Procedure-0350 informing the OEDO and the Commission of the NOED. If a natural event NOED is requested, a Daily Note will be submitted for both the request, and the approval or denial.

08.05 Timeframe for Documentation. The following table summarizes the timeframe for documentation.

DOCUMENTATION	TIMEFRAME
Licensee's written request	Within 2 working days of oral request for a regular NOED and within 3 hours for a natural event NOED
NRC authorization of NOED	Within 2 working days of licensee's written request
Licensee's request for follow-up amendment	Within 4 working days of oral approval of licensee's NOED request, unless staff agrees before approving NOED that an amendment is not needed.
NRC issues follow-up amendment	Within 4 weeks of licensee's submission of amendment request.

0410-09 ENFORCEMENT

09.01 Early Termination of NOED. The NRC may terminate a NOED for any reason before the time specified in the NOED approval as a matter of its discretion. In such cases, the region shall verify the licensee takes steps to achieve the appropriate plant status and implement the existing TS required actions upon the applicable regional division director's oral notification of the termination. The RA, Deputy RA, DRP Director, or DRP Deputy may terminate a NOED.

Upon notification of termination of the NOED, the licensee must inform the NRC within 6 hours of its proposed course of action to restore the plant to a condition of compliance with the license. The region shall document the termination of the NOED in a letter to the licensee and shall address the actions taken or planned by the licensee, including the time necessary for the licensee to achieve the required plant conditions in the most prudent manner, considering safety, and the reason for terminating the NOED.

09.02 Consideration of Enforcement. The decision to exercise enforcement discretion by approving a NOED neither changes the fact that a violation will occur nor implies that enforcement discretion is being exercised for any violation that may have led to the need for the NOED. In each case in which the NRC staff has chosen to exercise enforcement discretion, appropriate enforcement action, in accordance with the NRC's Enforcement Policy, will normally be taken for any violations that contributed to the noncompliance. Such enforcement action is intended to emphasize that licensees should not rely on the NRC's NOED process as a substitute for compliance or for requesting a license amendment.

The staff shall follow the guidance in the NRC Enforcement Manual located on OE's Web site to evaluate the need for and process any appropriate enforcement action.

OE approval is required if more than a minor violation is involved and the staff determines not to pursue an enforcement action (i.e., notice of violation or a non-cited violation). The enforcement action shall reference the NOED number. When the root cause of a licensee's need for a NOED was a violation, OE will issue an enforcement action (EA) number regardless of the severity level or whether the violation will ultimately be dispositioned as a notice of violation

(NOV) or a non-cited violation (NCV). However, the NOED shall not include the enforcement action number. OE will post the NOED approval or denial letter on the NRC external Web page.

0410-10 DISTRIBUTION

Copies of any NOED-related letters to the licensee are distributed according to established regional, NRR and OE procedures and shall include the following as a minimum:

1. Regional Coordinator, OEDO
2. Regional Administrator
3. NRR Reactor Safety Programs Deputy Director
4. NRR/DORL Division Director
5. Office of Enforcement Director
6. DRP, Region [X], Director
7. Public
8. NRR/DORL Technical Assistant
9. Online documents: electronic copy (Word file) to OE Internet Web master, e-mail: OEWEB Resource (file MUST be the FINAL agency document).
10. Applicable BCs (Region and NRR)
11. Applicable NRR plant PM
12. Applicable SRI

Further, the issuing region shall ensure the licensee's written request is profiled into ADAMS as "publicly available" in accordance with agency policy. Electronic copies of NOEDs should also be prepared. OE will post the region's NOED approval or denial letter on the NRC external Web page.

0410-11 TRACKING NOEDs

The NRR plant PM shall open a TAC number under licensing action code LD for all NOED actions upon learning of the potential NOED. The regional BC will assign the appropriate work tracking codes for the regional staff.

Designated regional personnel shall assign and track NOED numbers. Each NOED request will be assigned a number to permit tracking (regardless of whether granted or not) consisting of seven characters (five numbers and two dashes) in the format YY-R-XX. The first two numbers indicate the year, the third number indicates the number of the region, and the last two numbers

are the sequential number of the NOED for that region during the current calendar year. For example, NOED 10-3-02 is the second NOED granted by Region III in 2010. The NOED number should be included in parenthesis at the end of the subject line for the NOED written authorization (e.g., NOED 10-3-02) and in the ADAMS profile in accordance with the ADAMS template.

Each region is responsible for tracking the NOEDs it approves and for entering the required data into its tracking system. Additionally, each region is responsible for inspection, follow-up, and enforcement for NOEDs it granted.

0410-12 REFERENCES

1. NRC Enforcement Policy, U.S. Nuclear Regulatory Commission, Washington, DC.
2. 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," U.S. Nuclear Regulatory Commission, Washington, DC.
3. OEDO Procedure-0350, "NRC Daily Notes and One-Week Look Ahead"
4. Inspection Manual Chapter 0351, "Implementation of The Reactor Oversight Process at Reactor Facilities in an Extended Shutdown Condition for Reasons Other Than Significant Performance Problems," U.S. Nuclear Regulatory Commission, Washington, DC, April 05, 2011 (ADAMS Accession No. ML110030073).
5. EGM-09-008, "Enforcement Guidance Memorandum—Dispositioning Violations of NRC Requirements for Work Hour Controls Before and Immediately After a Hurricane Emergency Declaration," September 24, 2009, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092380177)
6. NRR Office Instruction, LIC-102, "Relief Request Reviews," August 24, 2009, (ADAMS Accession No. ML091380595).
7. Inspection Manual Chapter 0350, "Oversight of Reactor Facilities in a Shutdown Condition Due to Significant Performance and/or Operational Concerns," U.S. Nuclear Regulatory Commission, Washington, DC, December 15, 2006 (ADAMS Accession No. ML063400076).
8. Generic Letter 2006-02, "Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power," U.S. Nuclear Regulatory Commission, Washington, DC, February 1, 2006, (ADAMS Accession No. ML060180352).
9. Regulatory Issue Summary 2005-01, "Changes to Notice of Enforcement Discretion (NOED) Process and Staff Guidance," U.S. Nuclear Regulatory Commission, Washington, DC, February 7, 2005, (ADAMS Accession No. ML050280380).
10. NRC Inspection Manual, Part 9900: Technical Guidance, "Operations – Notices of Enforcement Discretion," December 22, 2004 (ADAMS Accession No. ML043570160).

11. MEMO from M. Tschiltz to P. Hiland, "Proposed Risk Guidance for Evaluating Notice of Enforcement Discretion (NOED) Requests," December 9, 2004, (ADAMS Accession No. ML043440044).
12. SECY-04-0187, "Proposed Revision to the Enforcement Policy to Address Responsibilities for Granting a Power Reactor Notice of Enforcement Discretion," October 14, 2004, (ADAMS Accession No. ML042650070)
13. Regulatory Issue Summary 2004-05, "Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power," U.S. Nuclear Regulatory Commission, Washington, DC, April 15, 2004, (ADAMS Accession No. ML040990550).
14. Regulatory Guide 1.182, "Assessing and Managing Risk before Maintenance Activities at Nuclear Power Plants," U.S. Nuclear Regulatory Commission, Washington, DC, May 2000 (ADAMS Accession No. ML003699426).
15. OIG/98A-06 - Follow up Review of NRC's Process for Issuing and Tracking Notices of Enforcement Discretion (NOED), July 30, 1998.
16. Staff Requirements - COMSAJ-97-008 - Discussion on Safety and Compliance, U.S. Nuclear Regulatory Commission, Washington, DC, August 25, 1997, (ADAMS Accession No. ML003753992).
17. Regulatory Guide 1.160, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," U.S. Nuclear Regulatory Commission, Washington, DC, March 1997.

Attachments:

1. NOED Checklist for NRR and Region Staff
2. Acronym List
3. Revision History

Attachment 1
NOED CHECKLIST
FOR NRR AND REGION STAFF

The following is a checklist that can be used to assist in evaluating a licensee NOED request. This is merely a tool to assist NRC staff and management to assure that: 1) all NOED requirements are met and 2) there is consistency between different licensees. NRC management and staff shall be familiar with the contents of this guidance document before relying on this checklist.

GENERAL NOED CRITERIA

Does the regional DRP Director concur that all required NRC personnel are available?

(Regional DRP Director, the applicable DRP BC, a regional SRA, the plant specific SRI, the NRR/DORL Director, the applicable NRR/DORL BC, the plant specific NRR plant PM, an NRR/DE BC (as appropriate), an NRR/DIRS BC (as appropriate), an NRR/DSS BC (as appropriate), an NRR/DRA BC (as appropriate), an NRR risk analyst or SRA, and the NRR NOED Process Expert. Appropriate additional regional and HQ staff will participate, as needed.)

If YES, identify the names of the people filling the positions, and continue. If NO, consult with the NRR/DORL Director and determine who shall fill the required positions.

DRP Director =
DRP BC =
Regional SRA =
Plant Specific SRI =
NRR Plant PM =
NRR/DE BC =
NRR/DE Staff =
NRR/DIRS BC =
NRR/DIRS Staff =
NRR/DSS BC =
NRR/DSS Staff =
NRR/DRA BC =
NRR/DRA Staff =
NRR NOED Process Expert =
Others

Does this NOED request involve an unanticipated temporary noncompliance with TS or with other license conditions when an amendment is not practical?

If YES, continue. If NO, exit the NOED process.

SECTION A
NOED EVALUATION SECTION 0410-07

07a. Did the licensee address what type of NOED is being requested, which of the NOED criteria is satisfied, and how it satisfied those criteria?

If YES, continue. If NO, deny the NOED.

07b. Did the licensee detail the TS or license condition that will be violated?

If YES, continue. If NO, deny the NOED.

07c. Did the licensee provide a description of the circumstances, including: likely causes; the need for prompt action; the action taken to avoid the need for a NOED; and any relevant historical events?

If YES, continue. If NO, deny the NOED.

07d. Did the licensee provide information that shows the licensee fully understands the cause of the situation that has led to the NOED request?

If YES, continue. If NO, deny the NOED.

07e. Did the licensee detail the proposed course of action to resolve the situation until the situation no longer warrants an NOED?

If YES, continue. If NO, deny the NOED.

07f. Did the licensee address that the resolution itself does not result in a different, unnecessary transient?

If YES, continue. If NO, deny the NOED.

07g. Did the licensee explain why they did not have time to process an emergency TS or license amendment or that a license amendment is not needed?

If YES, continue. If NO, deny the NOED.

07h. Did the licensee describe the condition and operational status of the plant, including safety-related equipment out of service or otherwise inoperable, and nonsafety-related equipment that is degraded or out of service that may have risk significance and that may increase the probability of a plant transient or may complicate the recovery from a transient or may be used to mitigate the condition?

If YES, continue. If NO, deny the NOED.

07i. Did the licensee request a specific period for the NOED, including a justification for the duration of the noncompliance?

If YES, continue. If NO, deny the NOED.

07j. Did the licensee detail and explain compensatory measures the plant has both taken and will take to reduce the risk associated with the specified configuration?

If YES, continue. If NO, deny the NOED.

07k. Did the licensee discuss the status and potential challenges to offsite and onsite power sources, including any current or planned maintenance in the distribution system and any current or planned maintenance to the emergency diesel generators?

If YES, continue. If NO, deny the NOED.

07l. Did the licensee include the safety basis for the request and an evaluation of the safety significance and potential consequences of the proposed course of action?

If YES, continue. If NO, deny the NOED.

07.m. Did the licensee demonstrate that the NOED condition, along with any compensatory measures, will not result in more than a minimal increase in radiological risk, either in a quantitative assessment that risk will be within the normal work control levels (ICCDP less than or equal to 5E-7 and/or ICLERP less than or equal to 5E-8) or in a defensible qualitative manner?

If YES, continue. If NO, deny the NOED.

07n. Did the licensee discuss forecasted weather and pandemic conditions for the NOED period and any plant vulnerabilities related to weather or pandemic conditions?

If YES, continue. If NO, deny the NOED.

07o. Did the licensee describe the basis for the conclusion that the noncompliance will not create undue risk to public health and safety?

If YES, continue. If NO, deny the NOED.

07p. Did the licensee describe the basis for the licensee's conclusion that the noncompliance will not involve adverse consequences to the environment?

If YES, continue. If NO, deny the NOED.

07q. Did the licensee discuss the capability of the UHS?

If YES, continue. If NO, deny the NOED.

07r. Did the licensee's facility organization that normally reviews safety issues approve the request?

If YES, continue. If NO, deny the NOED.

07s. Did the licensee commit that it will submit a written NOED request within two working days and a follow-up license amendment request following the staff's verbal approval of the NOED?

If YES, continue. If NO, deny the NOED.

If this is a natural event NOED proceed to Section B. Otherwise, consider approving the NOED request.

NOTES:

1. The NRC's primary considerations in approving a NOED are (1) the NRC is assured the licensee understands all safety and security concerns when operating outside of its TS or license conditions and (2) the licensee is implementing a plan to mitigate the additional risks and has communicated that plan to the NRC. The NRC must be satisfied that, during the period of the NOED, additional risks have been mitigated and therefore, there is no net increase in radiological risk to the public.

2. Approving or denying the NOED shall be based on whether approving the NOED will minimize potential safety consequences and operational risks that would occur if the NOED were not granted.

3. In all cases, the decision to approve or deny a NOED should be risk-informed, and should ultimately consider the safety implications of the net increase in radiological risk from (1) the enforcement discretion requested, if approved, and (2) the relative risk associated with the transitional risk from compliance to the TS or license condition, if denied.

SECTION B
ADDITIONAL CRITERIA FOR NATURAL EVENT NOED STAFF EVALUATION

07t.1. Did the licensee list the name, organization and telephone number of the official in the government or independent entity who made the emergency determination, if applicable?

If YES, continue. If NO, deny the NOED.

07t.2. Did the licensee include details of the basis and nature of the emergency situation, including grid information for a grid instability NOED?

If YES, continue. If NO, deny the NOED.

07t.3. Did the licensee identify and discuss the potential consequences of compliance with existing license requirements?

If YES, continue. If NO, deny the NOED.

07t.4. Did the licensee discuss the impact of the emergency on plant safety, including the capability of the UHS?

If YES, continue. If NO, deny the NOED.

07t.5. Did the licensee discuss the potential adverse effects on public health and safety from enforcing compliance with specific license requirements during the emergency?

If YES, continue. If NO, deny the NOED.

07t.6. If this is a grid instability NOED, is the NRC assured the licensee has exhausted all reasonable opportunities for purchasing replacement power, and the NOED shall not last any longer than replacement power becomes available?

If YES, continue. If NO, deny the NOED.

Attachment 2
ACRONYM LIST

ADAMS	Agencywide Documents Access and Management System
AOT	Allowed Outage Time
APOB	PRA Operational Support Branch
BC	Branch Chief
BPS	Bulk Power System
CDF	Core Damage Frequency
CFR	Code of Federal Regulations
CT	Completion Time
DE	Division of Engineering
DIRS	Division of Inspection and Regional Support
DORL	Division of Operating Reactor Licensing
DPR	Division of Policy and Rulemaking
DRP	Division of Reactor Projects
DSS	Division of Safety Systems
EDO	Executive Director for Operations
EGM	Enforcement Guidance Memorandum
EN	Enforcement Notification
FERC	Federal Energy Regulatory Commission
HOC	Headquarters Operations Center
HOO	Headquarters Operations Officer
HQ	Headquarters
ICCDP	Incremental Conditional Core Damage Probability
ICLERP	Incremental Conditional Large Early Release Probability
IMC	Inspection Manual Chapter
ISO	Independent System Operator
LCO	Limiting Conditions for Operation
LERF	Large Early Release Frequency
MWe	MegaWatts Electric
NERC	North American Electric Reliability Corporation
NOED	Notice Of Enforcement Discretion
NPP	Nuclear Power Plant
NRC	Nuclear Regulatory Commission
NRR	Nuclear Reactor Regulation
NUREG	NUclear REGulatory commission technical report
OE	Office of Enforcement
OEDO	Office of the Executive Director for Operations
OL	Operating License
PM	Project Manager
PRA	Probabilistic Risk Assessment
RA	Regional Administrator
RC	Reliability Coordinator
RG	Regulatory Guide
RI	Resident Inspector
SES	Senior Executive Service
SRA	Senior Reactor Analyst
SRI	Senior Resident Inspector

SSCs	Structures, Systems, and Components
STS	Standard Technical Specifications
TAC	Technical Assignment Control
TS	Technical Specifications
UFSAR	Updated Final Safety Analysis Report
URI	Unresolved Item

Attachment 3
Revision History

Commitment Tracking Number	Accession Number Issue Date Change Notice	Description of Change	Description of Training Required and Completion Date	Comment Feedback Resolution Accession Number
	ML120810084 dd/mm/2012	First issuance. This is a complete revision to IMC Part 9900: Technical Guidance for NOEDs and change to IMC 0410.	NRC staff required to review the new document.	ML12215A287