

United States Nuclear Regulatory Commission Official Hearing Exhibit	
In the Matter of:	Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3)
	ASLBP #: 07-858-03-LR-BD01 Docket #: 05000247 05000286 Exhibit #: ENT000539-00-BD01 Admitted: 10/15/2012 Rejected: Other:
	Identified: 10/15/2012 Withdrawn: Stricken:

ENT000539
Submitted: August 20, 2012

NUCLEAR REGULATORY COMMISSION ENFORCEMENT MANUAL



U.S. Nuclear Regulatory Commission
Office of Enforcement
Washington, DC 20555-0001

Revision 7
October 1, 2010

Table of Contents

<i>ABSTRACT</i>	<i>1</i>
<i>INTRODUCTION</i>	<i>I-1</i>
<i>CHAPTER 1 Responsibilities and Authorities</i>	<i>1-1</i>
<i>CHAPTER 2 Dispositioning Noncompliances</i>	<i>2-1</i>
<i>CHAPTER 3 Non-Cited Violations and Non-Escalated Actions</i>	<i>3-1</i>
<i>CHAPTER 4 Escalated Enforcement Actions</i>	<i>4-1</i>
<i>CHAPTER 5 Exercise of Discretion</i>	<i>5-1</i>
<i>CHAPTER 6 Wrongdoing</i>	<i>6-1</i>
<i>CHAPTER 7 Reactor Operations</i>	<i>7-1</i>
<i>CHAPTER 8 Miscellaneous Materials Enforcement Activities</i>	<i>8-1</i>

ABSTRACT

The NRC Enforcement Manual (Manual):

- is the primary source of guidance regarding agency policy and procedures for NRC staff implementing the enforcement program
- contains procedures, requirements, and background information that are essential to those who develop or review enforcement actions for the NRC
- provides guidance consistent with the Enforcement Policy

The enforcement program was developed to implement the Enforcement Policy which supports the agency's overall safety and security mission, i.e., to protect the public health and safety and provide for the common defense and security. To emphasize the importance the Commission places on this mission, two major goals of the enforcement program are (1) to emphasize the importance of compliance with regulatory requirements, and (2) to encourage prompt identification and prompt, comprehensive correction of violations.

NOTE:

The guidance provided in this manual has been written to be consistent with the Enforcement Policy. Because it is a policy statement, the Commission may deviate from the Enforcement Policy and its implementing procedures, as appropriate, under the circumstances of a particular case. In such cases, the Administrative Procedure Act (APA) requires that agency decisions have a reasonable basis, and prohibits a decision that is arbitrary or capricious. The Enforcement Policy is revised periodically to reflect current Commission direction. Before deciding on a specific enforcement action for enforcement issues which were identified prior to the effective date of a policy revision, the staff will consider the guidance from both the previous version of the Policy and the revised version, and typically will apply the more lenient of the two policy versions.

The Manual applies to the enforcement activities of the Office of Enforcement (OE), the Regional Offices, the Offices of Nuclear Reactor Regulation (NRR), New Reactors (NRO), Nuclear Material Safety and Safeguards (NMSS), Federal and State Materials and Environmental Management Programs (FSME), Nuclear Security and Incident Response (NSIR), International Programs (OIP), and all other special teams or task forces involved in enforcement activities. It also applies to the enforcement role of the Office of the General Counsel (OGC), with particular emphasis placed on the Associate General Counsel for Hearings, Enforcement, and Administration, and the Assistant General Counsel for Materials Litigation and Enforcement.

Abstract

Most enforcement actions are initiated from the Regional Offices; therefore, this Manual has been structured to reflect that the Regional Offices, for the most part, initiate, recommend, or issue enforcement actions. However, all offices that conduct inspections and determine compliance should follow the guidance in this Manual.

Program offices, such as NRR, NMSS, or NSIR, that take the lead for an enforcement action, assume the responsibilities of both the Program Office and the Regional Office for that action. In such cases, the Program Office should follow the guidance applicable to both the Program Office and the Regional Office.

The Manual is a living document and is maintained on the NRC Enforcement Web site. It can also be found on the NRC's public Web site, www.nrc.gov (Select **Electronic Reading Room**, then **Document Collections**, then "click on" **Enforcement Docs** under "Related Information" select "Enforcement Guidance"). Changes to the Manual are contained in "Change Notices" posted in the Change Notice Index on the Enforcement Web site. Enforcement Policy changes are also documented annually in the NRC Enforcement Program Annual Report.

Questions or comments about this manual should be sent to John R. Wray, Senior Enforcement Specialist, Office of Enforcement at john.wray@nrc.gov.

Table of Contents Introduction and Overview

<i>The Enforcement Process.....</i>	<i>I-2</i>
<i>Overview of the Enforcement Process.....</i>	<i>I-2</i>
<i>Enforcement.....</i>	<i>I-3</i>
<i>The Enforcement Component of the Reactor Oversight Program</i>	<i>I-4</i>
<i>Enforcement Actions Involving Individuals</i>	<i>I-5</i>
<i>Statute of Limitations.....</i>	<i>I-5</i>

Introduction and Overview

NRC ENFORCEMENT PROCESS

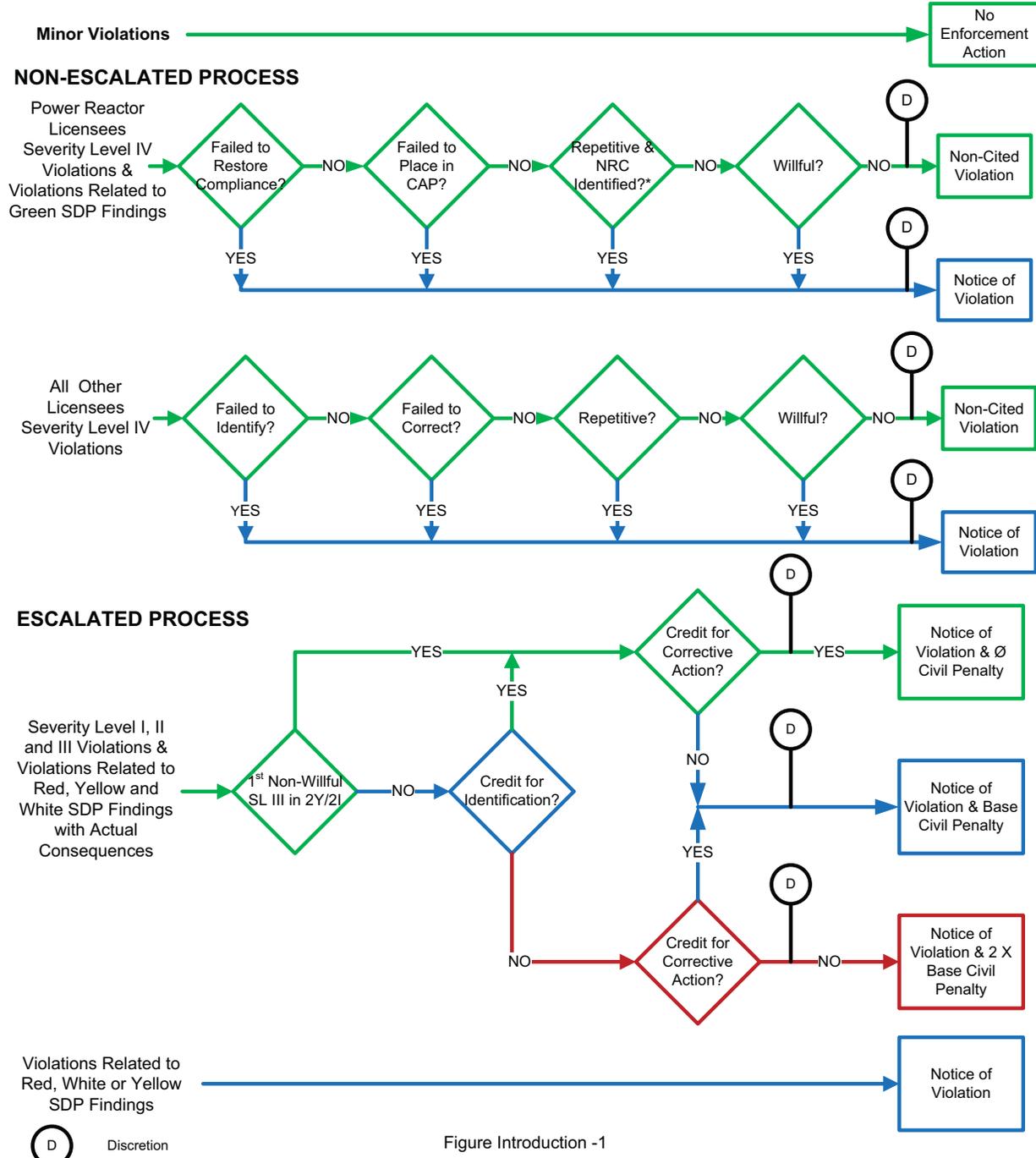


Figure Introduction - 1

Figure Introduction-1: Represents the NRC's graded approach to dealing with violations.

The Enforcement Process

- The NRC's Enforcement Program uses a graded approach for violations, both in terms of addressing their significance and developing sanctions.
- The NRC assesses the significance of a violation by considering:
 - actual safety consequences;
 - potential safety consequences;
 - potential for impacting the NRC's ability to perform its regulatory function; and,
 - any willful aspects of the violation.
- Violations are assigned a severity level ranging from Severity Level I for the most significant violations to Severity Level IV for those of more than minor concern.
- Issues assessed through the Reactor Oversight Process's (ROP) Significance Determination Process (SDP) are assigned a color, i.e., red, yellow, white or green, based on the risk significance, red being the most significant and green being the least significant.
- Minor violations must be corrected; however, given their limited risk significance, they are not subject to enforcement action and are not normally described in inspection reports.

Overview of the Enforcement Process

Generally, violations are identified through inspections and investigations. All violations are subject to civil enforcement action and some may also be subject to criminal prosecution. When an apparent violation is identified, it is assessed using the guidance in this Manual, in accordance with the Enforcement Policy.

There are three primary enforcement sanctions available: notices of violation, civil penalties, and orders.

- A **Notice of violation** (NOV) is a written notice that concisely identifies an NRC requirement and how it was allegedly violated. The NOV may require a written explanation or statement in reply in accordance with the guidance provided in the Notice (i.e., 10 CFR 2.201 specifies that the licensee or other person submit a written explanation or statement in reply within 20 days of the date of notice or other time specified in the Notice. The staff may allow additional time to respond upon a showing of good cause).
- A **Civil Penalty** is a monetary fine that is used to emphasize compliance in a manner that deters future violations and to focus licensee's attention on significant violations. Accordingly, different levels of penalties are provided in Tables 1 and 2, "Base Civil Penalties," of the Enforcement Policy. Civil penalties are issued under the authority of Section 234 of the Atomic Energy Act (AEA) or Section 206 of the Energy Reorganization Act (ERA). Section 234 of the AEA provides for penalties up to

\$100,000 per violation per day. This amount has been adjusted for inflation by the Debt Collection Improvement Act of 1996 and is currently \$140,000.

- **Orders** can be used to modify, suspend, or revoke licenses or require specific actions by licensees or other persons. Orders can also be used to impose civil penalties. The Commission's order issuing authority under Section 161 of the AEA is broad and extends to any area of licensed activity that the Commission deems necessary to promote the common defense and security or to protect health or to minimize danger to life or property. In addition, as a result of a 1991 rulemaking, the Commission's regulations now provide that orders may be issued to persons who are not themselves licensed.

Enforcement

After an apparent violation is identified, the next step is to gather information about the apparent violation and, thereafter, to assess its significance. Violations are assigned a severity level that reflects their seriousness and safety significance which, in turn, determines how the violation should be dispositioned. Severity Levels range from Severity Level I, for the most significant violations, to Severity Level IV for those of more than minor concern. Minor violations are below the significance of Severity Level IV violations and are typically not the subject of enforcement action. Nevertheless, the root cause(s) of minor violations must be identified and appropriate corrective action(s) must be taken to prevent recurrence.

In many cases, licensees who identify and promptly correct non-recurring Severity Level IV violations, without NRC involvement, will not be subject to formal enforcement action. Such violations will be characterized as "non-cited" violations as provided in Section 2.3.2 of the Enforcement Policy.

For materials licensees, if violations of more than a minor concern are identified by the NRC during an inspection, such violations will be the subject of an NOV and a written response may be required pursuant to 10 CFR 2.201, addressing the causes of the violations and corrective actions taken to prevent recurrence. In some cases, such violations can be documented on NRC Form 591 which constitutes an NOV that requires corrective action but does not require a written response.

When escalated enforcement action appears to be warranted (i.e., Severity Level I, II, or III violations, civil penalties or orders), a predecisional enforcement conference (PEC) may be conducted with a licensee before the NRC makes an enforcement decision. A PEC may also be held when the NRC concludes that it is necessary or the licensee requests it. The purpose of the PEC is to obtain information that will assist the NRC in determining the appropriate enforcement action. The decision to hold a PEC does not mean that the agency has determined that a violation has occurred or that enforcement action will be taken. If the NRC concludes that a conference is not necessary, it may provide a licensee with an opportunity to respond to the apparent violations in writing or by requesting a PEC before making an enforcement decision.

Civil penalties are normally assessed for Severity Level I and II violations and for NRC-identified violations involving knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act. Civil penalties are considered for Severity Level III violations.

If a civil penalty is to be proposed, a written NOV and proposed imposition of a civil penalty must first be issued. The NOV must advise the person charged with the violation that the civil penalty may be paid in the amount specified, or the proposed imposition of a civil penalty may be contested in whole or in part, by a written response, either denying the violation or showing extenuating circumstances. The NRC will evaluate the response and use that information to determine if the civil penalty should be mitigated, remitted, or imposed by order. Thereafter, the licensee may pay the civil penalty or request a hearing.

Orders may be used to modify, suspend, or revoke licenses. Orders may require additional corrective actions, such as removing specified individuals from licensed activities or requiring additional controls or outside audits. Persons adversely affected by orders that modify, suspend, revoke a license, or that take other action, may request a hearing.

NOTE:

The NRC may issue a press release with a proposed civil penalty, Demand for Information (DFI), or order. All orders and DFIs are published in the *Federal Register*.

In addition to the orders used to modify, suspend, or revoke licenses, the agency may issue a Demand for Information (DFI). A DFI is a significant enforcement action which can be used with other enforcement actions such as an imposition of a civil penalty. As its name implies, a DFI is a request for information from licensees and applicants for a license, vendors and contractors, in order to determine, e.g., whether a license should be granted, suspended, or revoked, or whether further enforcement action is warranted.

The Enforcement Component of the Reactor Oversight Program

The Reactor Oversight Process (ROP) utilizes the results of performance indicators (PIs) and baseline inspection findings to determine the appropriate regulatory action to be taken in response to a licensee's performance. Because there are many aspects of facility operation and maintenance, the NRC inspects utility programs and processes on a risk-informed sampling basis to obtain representative information. The objective is to monitor performance in three broad areas -- reactor safety (avoiding accidents and reducing the consequences of accidents if they occur); radiation safety for both plant workers and the public during routine operations; and protection of the plant against sabotage or other security threats. The ROP has been in effect since April 2000.

Under the ROP, the staff assesses certain inspections findings at nuclear power plants through the Significance Determination Process (SDP). The SDP is a risk-informed framework that was developed to evaluate the actual and potential safety significance of

these findings. Such findings may contribute to potential safety concerns or programmatic weaknesses that do not violate NRC regulations. The SDP provides a basis for discussing and communicating the significance of such findings with the licensee. Some findings are associated with violations of the regulations. The final disposition of the violations associated with findings that have been evaluated through the SDP is contingent on the risk significance attributed to the findings (assigned the colors of green, white, yellow, or red with increasing risk).

The Enforcement Policy has been revised to state that Regulatory Conferences will be conducted in lieu of predecisional enforcement conferences if violations are associated with risk significant findings evaluated through the SDP. The Policy notes that Regulatory Conferences are conducted to discuss the significance of findings evaluated through the SDP with or without associated violations. The focus of these meetings is on the significance of the issues and not necessarily on the correction actions associated with the issue. Because the significance assessment from the SDP determines whether or not escalated enforcement action will be issued, a subsequent predecisional enforcement conference is not normally necessary. In addition, the Enforcement Policy has been modified to clarify that the mitigation discretion addressed in Sections 3.1 - 3.5 (e.g., violations identified during shutdowns, involving past enforcement actions, old design issues, or special circumstances) does not normally apply to violations associated with issues evaluated by the SDP.

Enforcement Actions Involving Individuals

The NRC will normally take an enforcement action against an individual only if the staff is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew or should have known, the required actions; and knowingly or with careless disregard (i.e., with more than mere negligence) failed to take required actions which have actual or potential safety significance.

Actions can be taken directly against individuals either because they are individually licensed or because they violated the rules on deliberate misconduct. Generally, when enforcement action is taken against an individual, enforcement action is taken against a licensee.

Statute of Limitations

The Statute of Limitations is applicable to NRC civil penalty cases (see 28 USC §2462), and requires that the NRC initiate an action imposing a civil penalty, issuing an order to modify, suspend, or revoke a license or an order prohibiting involvement in NRC licensed activity (enforcement sanction) within the 5-year statutory period.

NOTE:

The **Statute of Limitations** is an affirmative defense which can be raised by a person against whom such a sanction is proposed.

The Statute of Limitations does not prevent the staff from issuing an NOV (without a civil penalty or other sanction) even if the underlying violation occurred more than five years earlier, or from issuing an order requiring an action needed to ensure compliance with existing requirements regarding protection of the public health and safety, promoting the common defense and security, or protecting the environment.

Table of Contents

3.1	<i>Non-Cited Violations (NCVs)</i>	3-4
3.1.1	<i>NCVs for Power Reactor Licensees</i>	3-4
3.1.2	<i>Circumstances Resulting in Consideration of an NOV (vs. an NCV) for Power Reactor Licensees</i>	3-5
3.1.3	<i>Circumstances Resulting in Consideration of an NOV (vs. an NCV) for All Other Licensees</i>	3-11
3.1.4	<i>Issuing an NCV When Criteria in Section VI.A of the Enforcement Policy are met for Issuing an NOV</i>	3-15
3.1.5	<i>NCV Coordination and Review</i>	3-16
3.1.6	<i>NCV Signature Authority</i>	3-16
3.1.7	<i>Licensee Denial of NCV</i>	3-17
3.2	<i>Non-Escalated Notice of Violation (NOV)</i>	3-18
3.2.1	<i>Preparing a Non-Escalated NOV Action</i>	3-18
3.2.2	<i>Issuing a Non-Escalated NOV Beyond the Criteria in Section VI.A of the Enforcement Policy</i>	3-21
3.2.3	<i>Non-Escalated NOV Coordination and Review</i>	3-21
3.2.4	<i>Non-Escalated NOV Signature Authority</i>	3-23
3.2.5	<i>Licensee Notification, Mailing, and Distribution for Non-Escalated NOVs</i>	3-23
3.2.6	<i>Licensee Response to a Non-Escalated NOV</i>	3-24
3.3	<i>Notice of Deviation (NOD)</i>	3-26
3.3.1	<i>Preparing an NOD Action</i>	3-26
3.3.2	<i>Licensee Notification, Mailing, and Distribution for NODs</i>	3-27
3.4	<i>Notice of Nonconformance (NON)</i>	3-27
3.4.1	<i>Preparing a NON Action</i>	3-28
3.4.2	<i>Notification, Mailing, and Distribution of NONs</i>	3-29
3.5	<i>Confirmatory Action Letter (CAL)</i>	3-29
3.5.1	<i>Noncompliance with CALs</i>	3-31
3.5.2	<i>Preparing a CAL</i>	3-32
3.5.3	<i>CAL Coordination and Review</i>	3-33
3.5.4	<i>CAL Signature Authority</i>	3-34
3.5.5	<i>Licensee Notification, Mailing, and Distribution for CALs</i>	3-34
3.5.6	<i>CAL Tracking Responsibilities</i>	3-35
3.5.7	<i>Closing Out CALs</i>	3-35
3.5.8	<i>Press Releases for CALs</i>	3-36

- c). If the region concludes that the violation should be withdrawn, the subject line should read, "WITHDRAWAL OF NOTICE OF VIOLATION."

3.3 Notice of Deviation (NOD)

- A. A Notices of Deviation (NOD) is a written notice to a licensee describing its failure to satisfy a commitment that is not a legally binding requirement.
 1. Although an NOD is considered an administrative mechanism, it is processed as a non-escalated enforcement action.
 2. A NOD is normally sent to the licensee as an attachment to an inspection report.
- B. The timeliness goal for issuing a routine NOD is the same as for issuing clear inspections (i.e., 21 calendar days after the inspection has been completed; 30 days for team inspections (see MC 0610 and MC 0612).

3.3.1 Preparing an NOD Action

- A. The regions should prepare an NOD action package, using the applicable standard format provided in Appendix B. NODs should be dated the same date as the transmittal letter to the licensee.
 1. The NOD should include the following elements:
 - a). Inspection reports which should be prepared in accordance with the guidance in MC 0610 and MC 87100 and the guidance provided in this Manual;

NOTE:

NODs are considered non-escalated enforcement actions, therefore, they normally do not need to be coordinated with OE prior to issuance; however, NODs involving the FSAR require the approval of the Director, OE.

- b). A concise, clear statement of the applicable commitment;
- c). A brief statement (usually no more than a few sentences) addressing the circumstances of the deviation, including the date(s) of the deviation and the facts necessary and sufficient to demonstrate that the commitment was not met ("contrary to" paragraph).
 - 1). To demonstrate noncompliance, the language of the "contrary to" statement should parallel the applicable language of the commitment.

- 2). Each deviation, including a deviation with multiple examples, should contain a single "contrary to" statement;
2. As a general rule, multiple examples of the same deviation during the period covered by an inspection should be included in one citation.
 - a). The "contrary to" paragraph should generally state the deviation, followed by "...as evidenced by the following examples" and the examples delineated as 1, 2, 3, etc.
 - b). When the examples of a particular deviation are numerous, sufficient examples should be cited to convey the scope of the deviation and to provide a basis for assessing the effectiveness of the licensee's corrective actions. Normally three to five examples is adequate.
 3. The NOD should also include:
 - a). A request for the licensee to provide a response which includes the reasons for the deviation;
 - b). The corrective actions which will be taken to avoid further deviations; and
 - c). The date when the corrective actions will be completed.
- B. Cover letters that transmit inspection reports and NODs should be prepared by the region using the appropriate form in Appendix B modified to distinguish an NOD from an NOV.

3.3.2 Licensee Notification, Mailing, and Distribution for NODs

- A. Licensees are normally sent NODs at the time an inspection report is issued. NODs are made available to the Public in accordance with agency procedures. The mailing and distribution of the inspection report and NOD are controlled by regional procedures.
- B. NOV's should be used for certificate holders who fail to meet requirements directly imposed on them by the NRC and for vendors who violate 10 CFR Part 21 requirements or other requirements directly imposed on them by the NRC.

3.4 Notice of Nonconformance (NON)

- A. A **Notice of Nonconformance (NON)** is a written notice to a vendor or certificate holder describing its failure to meet commitments related to NRC activities. These commitments are normally contained in contract requirements and are not directly imposed on the vendor or certificate holder by the NRC.
- B. An NON is considered an administrative mechanism and is processed as a non-escalated enforcement action. An NON is normally sent to the vendor or certificate holder as an attachment to an inspection report.

- C. The timeliness goal for issuing a routine NON is the same as for issuing clear inspections (i.e., 21 calendar days after the inspection has been completed; 30 days for team inspections (see MC 0610 and MC 0612).

3.4.1 Preparing a NON Action

- A. NON actions should be prepared by:
1. The NRR staff responsible for vendor cases; or
 2. The NMSS staff responsible for shipping package transportation cases.
- B. NONs are dated the same date as the cover letter transmitting the action to the vendor or certificate holder.
- C. The NON should include the following elements:
1. Inspection reports which should be prepared in accordance with the guidance in MC 0610 and MC 87100 and the guidance provided in this Manual;
 2. A concise, clear statement of the applicable requirement or requirements, appropriately referenced, paraphrased, or quoted;
 3. A brief statement (usually no more than a few sentences) addressing the circumstances of the nonconformance, including the dates of the nonconformance (if possible to determine) and the facts necessary to demonstrate that one or more of the requirements were not met ("contrary to" paragraph).

NOTE:

Because an NON is considered a non-escalated enforcement action, it does not need to be coordinated with OE prior to issuance.

- a). To demonstrate noncompliance, the language of the "contrary to" statement should parallel the applicable language of the requirement.
 - b). Each nonconformance, including a nonconformance with multiple examples, contains a single "contrary to" statement;
4. As a general rule, multiple examples of the same nonconformance during the period covered by an inspection should be included in one citation.
- a). The "contrary to" paragraph should generally be followed by "...as evidenced by the following examples:" and examples delineated as 1, 2, 3, etc.

- b). When the examples of a particular nonconformance are numerous, sufficient examples should be cited to convey the scope of the nonconformance and to provide a basis for assessing the effectiveness of the corrective actions. Normally three to five examples is adequate.
- 5. A request for the vendor or certificate holder to provide a response which includes a description of the actions taken or planned to correct the nonconformances, the actions taken or planned to prevent recurrence, and the date when the corrective actions were or will be completed.
- D. Cover letters that transmit inspection reports and NONs should be prepared using the appropriate form in Appendix B.

3.4.2 Notification, Mailing, and Distribution of NONs

Vendors or certificate holders are normally sent NONs at the time an inspection report is issued. NONs are made available to the Public in accordance with agency procedures.

3.5 Confirmatory Action Letter (CAL)

- A. **Confirmatory Action Letters (CALs)** are letters issued to licensees or vendors to emphasize and confirm a licensee's or vendor's agreement to take certain actions in response to specific issues. The NRC expects licensees and vendors to adhere to any obligations and commitments addressed in a CAL.
- B. CALs should only be issued when there is a sound technical and/or regulatory basis for the desired actions discussed in the CAL.
 - 1. CALs must meet the threshold defined in the Enforcement Policy, i.e., "to remove significant concerns about health and safety, safeguards, or the environment."

NOTE:

The level of significance of the issues addressed in a CAL should be such that if a licensee did not agree to meet the commitments in the CAL, the staff would likely proceed to issue an order.

- 2. CALs should be limited to those cases where the issues involved clearly meet the threshold described in the preceding paragraph.
- C. Even though a CAL by definition confirms an agreement by the licensee to take some described action, it may, at times, require some negotiation with the licensee prior to issuance.
 - 1. The licensee must agree to take the action.

2. Once a CAL is agreed upon, the licensee is expected to take the documented actions and meet the conditions of the CAL.
- D. A CAL may be issued when a materials licensee is violating a particular license condition, but the license condition prescribes neither the action nor the timeliness for restoring compliance as would be prescribed by a reactor licensee's technical specification action statement.
1. A CAL would be useful in this type of situation to confirm compensatory actions which, if implemented, would ensure safety such that an immediate suspension of licensed activities might not be necessary.
 2. The use of a CAL in this situation is generally reserved for materials licensees.
 3. A NOED would be the appropriate tool for reactor licensees and gaseous diffusion plants if the issue is addressed by a license or certificate condition.

NOTE:

CALs are flexible and valuable tools available to the staff to resolve licensee issues in a timely and efficient manner, e.g., when an order is warranted to address a specific issue, a CAL is a suitable instrument to confirm initial, agreed upon, short-term actions covering the interval period prior to the actual issuance of the order.

- E. CALs may be issued to confirm the following types of actions (note that this is not an exhaustive list):
- In-house or independent comprehensive program audit of licensed activities
 - Correction of training deficiencies, e.g., radiological safety, etc.
 - Procedural improvements
 - Equipment maintenance
 - Equipment operation and safety verification
 - Voluntary, temporary suspension of licensed activities
 - Licensee's agreement to NRC approval prior to resumption of licensed activities
 - Root cause failure analyses
 - Improved control and security of licensed material
- F. On occasion, licensees elect to submit letters to the NRC addressing actions that they intend to take in reaction to safety issues.
1. Depending on the significance of the issues involved, the staff may elect to issue a brief CAL accepting the licensee's letter and commitments; however, this practice should not be routine.
 2. CALs should be limited to those cases where the issues involved clearly meet the threshold for issuing a CAL discussed above.

- G. CALs may be used to confirm that a licensee will adhere to existing provisions.
1. CALs should not be used to remove an individual from, or restrict his or her ability to perform, licensed activities. Such action normally requires an order, not only to ensure enforceability, but because individual rights are affected and the opportunity for a hearing must be given both to the licensee and the affected individual.

NOTE:

The issuance of an order, in lieu of a CAL, should be considered whenever there is a need to ensure that a legally binding requirement is in place. Orders must be coordinated between the regional office, the appropriate program office, OGC, and OE.

2. Orders should be issued instead of CALs in the following situations:
 - a). When it is apparent that the licensee will not agree to take certain actions that the staff believes are necessary to protect public health and safety and the common defense and security;
 - b). When there is an integrity issue;
 - c). When there is some likelihood that a licensee may not comply with a CAL commitment; or
 - d). When the staff has concluded that the CAL will not achieve the desired outcome.

3.5.1 Noncompliance with CALs

- A. CALS do not establish legally binding commitments with the exception of the reporting provisions contained in Section 182 of the Atomic Energy Act, as amended (AEA) and its implementing regulations which require a licensee to notify the NRC when:
1. The licensee's understanding of its commitments differs from what is stated in a CAL;
 2. The licensee cannot meet the corrective actions schedule; and
 3. The licensee's corrective actions are completed.
- B. Failure to provide the reports required by Section 182 of the AEA may be treated like any other violation of a legally binding requirement.
- C. Failure to meet a commitment in a CAL can be addressed through;

1. An NOD;
 2. An order where the commitments in a CAL would be made NRC requirements; and
 3. A Demand For Information (DFI) where the licensee's performance, as demonstrated by the failure to meet CAL commitments, does not provide reasonable assurance that the NRC can rely on the licensee to meet the NRC's requirements and protect public health and safety or the common defense and security.
- D. Issuance of a CAL does not preclude the NRC from taking enforcement action for violations of regulatory requirements that may have prompted the issuance of the CAL. Such enforcement action is intended to:
1. Emphasize safe operation in compliance with regulatory requirements; and
 2. Clarify that the CAL process is not a routine substitute for compliance.
- E. The NRC would not normally take additional enforcement action for those violations that continue after a CAL has been issued where compensatory actions have been accepted by the NRC and taken by the licensee in accordance with its commitments.

3.5.2 Preparing a CAL

- A. CALs should be prepared using the appropriate form in Appendix B and should include the following elements:
1. A brief discussion of the specific issues with which the NRC has concern, including how and when they were identified.
 2. A brief statement summarizing NRC/licensee communication on the agreed-upon actions.
 - a). The statement should include when the communication took place, the names and positions of the principal individuals involved in the communication, and whether the communication took place in a telephone conversation or a face-to-face meeting.
 - b). Face-to-face meetings should also include the location of the meeting (i.e., regional office, licensee's facility).
 3. A clear description of the agreed-upon actions and where warranted and appropriate, the date(s) when actions will be completed.
 4. A statement that requires the licensee to provide written notification to the NRC if its understanding of the relevant issues and commitments differ from what is stated in the CAL.

5. A statement that requires the licensee to provide written notification to the NRC if for any reason it cannot complete the actions within the specified schedule. It should also require that the licensee inform the NRC of the modified schedule.
6. A statement that requires the licensee to provide written notification to the NRC if it intends to change, deviate from, or not complete any of the documented commitments, prior to the change or deviation.
7. A statement that requires the licensee to provide the NRC with written confirmation of completed actions.
8. A statement that issuance of the CAL does not preclude issuance of an order formalizing the commitments in the CAL or requiring other actions nor does it preclude the NRC from taking enforcement action for violations of NRC requirements that may have prompted the issuance of the CAL.
9. A statement that failure to meet the commitments in a CAL may result in an order if the licensee's performance, as demonstrated by the failure to meet CAL commitments, does not provide reasonable assurance that the NRC can rely on the licensee to meet the NRC's requirements and protect public health and safety or the common defense and security.
10. A statement that the letter and any licensee response will be made available to the Public.
11. Citation of the regulation implementing Section 182 of the AEA and authorizing the required responses to the CAL by the licensee.

3.5.3 CAL Coordination and Review

- A. CALs should be coordinated and reviewed according to the following guidelines:
 1. CALs issued by the region must be coordinated with the appropriate program office by telephone prior to issuance.
 - a). Unless NMSS requests, CALs issued to materials licensees do not require NMSS concurrence.
 - b). CALs issued to reactor licensees must be concurred on by the Director, NRR.
 - c). Because NSIR is responsible for coordinating security assessment activities across the spectrum of NRC licensees, CALs issued to NRC licensees which include security-related provisions, must be concurred on by the Director, NSIR.
 2. Regional Enforcement Coordinators should be consulted before the region issues a CAL.

3. Applicable Program Office Enforcement Coordinators should be consulted before the program office issues a CAL.

NOTE:

CALs should not be used to remove an individual from, or restrict his or her ability to perform, licensed activities. Such action normally requires an order, not only to ensure enforceability, but because individual rights are affected and the opportunity for a hearing must be given both to the licensee and the affected individual.

4. CALs issued by NRR, NMSS, or NSIR, must be coordinated with the appropriate region. This coordination will help to provide consistency between the regions and program offices in response to similar issues and provide program oversight and assistance.
5. Unless OE requests, CALs do not need to be coordinated with or concurred in by OE.

3.5.4 CAL Signature Authority

CALs should be signed and issued according to the following guidelines:

- A. The Regional Administrator should sign all CALs issued by the region. Delegation of signature authority should not be below the Division Director or acting Division Director level.
- B. The Director, NRR, the Director, NMSS, or the Director, NSIR, should sign all CALs issued by NRR, NMSS, or NSIR, respectively. Delegation of signature authority should not be below the Division Director or acting Division Director level.

3.5.5 Licensee Notification, Mailing, and Distribution for CALs

- A. CAL distribution:
 1. CALs should be sent to the licensee by either Certified Mail (Return Receipt Requested) or Express Mail.
 2. Upon issuance, CALs should be distributed to:
 - OE
 - The appropriate Deputy EDO
 - The appropriate program office (i.e., NRR, NMSS, or NSIR)
 - The appropriate region
 - The appropriate Regional Public Affairs Officer
 - The Regional State Liaison Officer

- The State
 - For material licensees, a copy should be sent to the Regional State Agreements Officer
3. CALs should, where possible, be made available to the Public.
- B. The staff should be sensitive to describing agreed upon licensee corrective actions that involve safeguards matters to prevent inadvertent release of safeguards information.

3.5.6 CAL Tracking Responsibilities

- A. The issuing office (i.e., region, NRR, NMSS, or NSIR) is responsible for tracking the CALs it has issued and should maintain a list summarizing the following information suitable for auditing actions associated with CALs, including:
1. How many CALs have been issued;
 2. To whom the CAL has been issued;
 3. Why the CAL was issued, i.e., a brief description of the issues; and
 4. When all corrective actions were or will be completed.
- B. CAL tracking numbers will be assigned as follows:
1. The region will assign CAL tracking numbers based on the region number, the year of issuance, and the sequential CAL number in that region for that year (e.g., 2-06-008).
 2. NRR, NMSS, and NSIR will assign CAL tracking numbers in the same manner as the regions, e.g., NRR-06-006, NMSS-06-003, NSIR-06-002.
 3. In cases where NSIR has the lead for the enforcement action, NSIR may, with agreement from NMSS or NRR as applicable, use the tracking system of the Office responsible for the license.
- C. Addendums to CALs should retain the same CAL number followed by an alphabetical reference based on the corresponding addendum for that CAL (e.g., 2-00-008A, NRR-00-006B).

3.5.7 Closing Out CALs

- A. A CAL may or may not require follow-up inspection to verify completion of the specified licensee actions. Whether the staff believes that an inspection is necessary to close a CAL will be determined on a case-by-case basis and will depend on the circumstances of the case.

- B. The issuing office (i.e., region, NRR, NMSS, or NSIR) will issue documentation formally closing out the CAL.
- C. Correspondence closing out a CAL should be sent to the same person/address as the CAL; however, verbal notification, in advance of written correspondence, may be sufficient to permit plant restart or resumption of affected licensee activities.

3.5.8 Press Releases for CALs

Press releases are not routinely issued to address the issuance of a CAL. If a region believes that a press release is appropriate, it should be coordinated with Public Affairs which will make that determination.