

Proposed Policy Revisions

1. **Construction Reactor Oversight Process (cROP)**

(a) Table of Contents

The Table of Contents will be revised to incorporate the inclusion of the cROP into the Enforcement Policy (policy). This will require a revision to the titles of Sections 2.2.3 and 2.2.4. In addition to the proposed revision discussed below, there are also other miscellaneous cROP related reference revisions throughout the policy.

(b) Section 2.2 “Assessment of Violations”

Section 2.2 will be modified to add the implementation of the cROP, and remove the specificity which allows for the use of the significance determination process (SDP), not only for facilities under construction, but for independent spent fuel storage installations when an SDP is developed to the policy.

Proposed Revision:

After a violation is identified, the U. S. Nuclear Regulatory Commission (NRC) assesses its severity or significance (both actual and potential). Under traditional enforcement, the severity level (SL) assigned to the violation generally reflects the assessment of the significance of a violation, and is referred to as traditional enforcement. For most violations committed by ~~operating~~ power reactor licensees, the significance of a violation is assessed using the ~~SDP under the~~ Reactor Oversight Process (ROP) ~~or the Construction Reactor Oversight Process (cROP)~~, as discussed below in Section 2.2.3, ~~“Operating Reactor Oversight Program Assessment of Violations Identified Under the ROP or cROP.”~~ All other violations ~~at power reactors or power reactor facilities under construction~~ will be assessed using traditional enforcement as described in Section 2.2.4, ~~“Exceptions to Using Only the Operating Reactor Assessment Program Using Traditional Enforcement to Disposition Violations Identified at Power Reactors.”~~ ~~Power reactor facilities under construction, independent spent fuel storage installations (ISFSI), and nuclear materials facilities are not subject to the SDP and, thus, traditional enforcement will be used for these facilities.~~ Violations identified at facilities that are not subject to an ROP or cROP are assessed by using traditional enforcement.

(c) Section 2.2.3 “Operating Reactor Assessment Program”

This section will be revised to add the implementation of the cROP and will reference the NRC’s Inspection Manual Chapter (IMC) 2505. IMC 2505 describes the construction assessment program and serves the same purpose as IMC 0305.

Proposed Revision:

~~2.2.3 Operating Reactor Assessment Program Assessment of Violations Identified Under the ROP or cROP~~

The assessment, disposition, and subsequent NRC action related to inspection findings identified at operating power reactors are determined by the ROP, as described in NRC IMC 0305, ~~“Operating Reactor Assessment Program,”~~ and ~~IMC 0612, “Power Reactor Inspection Reports.”~~ The assessment, disposition, and subsequent NRC action related to inspection findings identified at power reactors under the cROP are determined by the

cROP, as described in IMC 2505, "Periodic Assessment of Construction Inspection Program Results," and in IMC 0613, "Power Reactor Construction Inspection Reports."

Inspection findings identified through the ROP are assessed for ~~safety~~ significance using the SDP described in IMC 0609, "Significance Determination Process." ~~Inspection findings identified through the cROP are assessed for significance using the SDP described in IMC 2519, "Construction Significance Determination Process."~~ The SDPs uses risk insights, where possible, to assist the NRC staff in determining the ~~safety or security~~ significance of inspection findings identified within the ROP ~~or cROP~~. Inspection findings processed through the SDP, including associated violations, are documented in inspection reports and are assigned one of the following colors, depending on their ~~safety~~ significance.

(d) Section 2.2.4 "Exceptions to Using Only the Operating Reactor Assessment Program"

This section will be revised to add the implementation of the cROP and will reference IMC 2505.

Proposed Revision:

2.2.4 ~~Exceptions to Using Only the Operating Reactor Assessment Program Using Traditional Enforcement to Disposition Violations Identified at Power Reactors~~

Some aspects of ~~inspection findings and their associated~~ violations at ~~operating~~ power reactors cannot be addressed ~~only solely~~ through the SDP. ~~In these cases, violations must be addressed separately from any associated ROP or cROP findings (when findings are present). Accordingly, these violations are assigned severity levels and can be considered for civil penalties in accordance with this policy while the significance of the associated ROP or cROP finding (when present) must be dispositioned in accordance with the SDP. Operating Reactor Assessment Program. Operating reactor inspection findings are assigned significance and any associated violations involving traditional enforcement are assigned severity levels and can be considered for civil penalties (see IMC 0612).~~ In determining the severity level assigned to such violations, the NRC will consider information in this policy and the violation examples in Section 6.0 of this policy, as well as SDP-related information, when available. Typically, the types of violations dispositioned using traditional enforcement include the following:

(e) Section 2.2.6 "Construction"

This section will be revised to provide clarifying guidance regarding enforcement and the Changes during Construction (CdC) Preliminary Amendment Request (PAR) process. The policy will now note that enforcement actions will not be taken for construction pursuant to a PAR No-Objection Letter that is outside of the current licensing basis (CLB) while the corresponding license amendment request (LAR) is under review. This will allow the licensee to continue construction at-risk if the construction is consistent with the associated LAR and the No-Objection Letter.

Proposed Revision:

2.2.6 Construction

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 50.10, no person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit under 10 CFR Part 50, a combined license under 10 CFR Part 52, an early site permit authorizing the activities under 10 CFR 50.10(d), or a limited work authorization under 10 CFR 50.10(d). In an effort to avoid unnecessary regulatory burden on ~~10 CFR Part 52 combined license licensees~~, while maintaining safety, the CdC PAR ~~process~~ is developed in Interim Staff Guidance (ISG)-025 “Interim Staff Guidance on Changes during Construction under 10 CFR Part 52.” The licensing condition providing the option for a PAR as detailed in ISG-025 allows the licensee to request to make physical changes to the plant that are consistent with the scope of the associated license amendment request (LAR). The NRC staff may issue a No-Objection Letter, with or without specific limitations, in response to the PAR. Enforcement actions will not be taken for construction pursuant to a PAR No-Objection Letter that is outside of the CLB while the corresponding LAR is under review as long as the construction is consistent with the associated LAR and the No-Objection Letter (the latter of which may contain limitations on construction activities). The PAR No-Objection Letter authorization is strictly conditioned on the licensees’ commitment to return the plant to its CLB if the requested LAR is subsequently denied or withdrawn. ~~Permits the licensee to proceed with the installation and testing of structures, systems or components different from the current licensing basis while the license amendment request (LAR) is under NRC review. Any activities undertaken under the CdC process are at the risk of the licensee, and the licensee is obligated to return to the CLB if the related LAR is subsequently not approved by the NRC.~~ Failure to timely restore the CLB may be subject to separate enforcement, such as an order, a civil penalty, or both.

In accordance with 10 CFR 70.23(a)(7) and 10 CFR 40.32(e), commencement of construction before the NRC finishes its environmental review and issues a license for processing and fuel fabrication, conversion of uranium hexafluoride, or uranium enrichment facility construction and operation is grounds for denial to possess and use licensed material in the plant or facility. Additionally, in accordance with 10 CFR 70.23(b), failure to obtain Commission approval for the construction of the principal structures, systems, and components of a plutonium processing and fuel fabrication plant before the commencement of construction may also be grounds for denial of a license to possess and use special nuclear material.

(f) Section 2.3.1 “Minor Violation”

This revision will remove redundant language (IMC titles) from previously identified IMCs, and will add references to examples of minor violation issues found in IMCs 0613 and 0617.

Proposed Revision:

Violations of minor safety or security concern generally do not warrant enforcement action or documentation in inspection reports but must be corrected. Examples of minor violations can be found in the NRC Enforcement Manual, ~~and in~~ IMC 0612, “~~Power Reactor Inspection Reports~~” (Appendix E, “Examples of Minor Issues,”), IMC 0613, Appendix E, “Examples of Minor Construction Issues”), and IMC 0617, Appendix E,

~~“Minor Examples of Vendor and Quality Assurance Implementation Findings.”; “Vendor and Quality Assurance Implementation Inspection Reports (Appendix E, “Examples of Minor Issues”); Guidance Provisions for documenting minor violations can be found in the NRC Enforcement Manual; IMC 0610, “Nuclear Material Safety and Safeguards Inspection Reports”; IMC 0612; IMC 0613, “Documenting 10 CFR Part 52 Construction and Test Inspections”; IMC 0616, “Fuel Cycle Safety and Safeguards Inspection Reports”; and IMC 0617, “Vendor and Quality Assurance Implementation Inspection Reports.”~~

(g) Section 2.3.2 “Noncited Violation”

This revision intends to improve on the “Plain Writing.” It will also make the opening paragraph of Section 2.3.2 consistent with a previous approved revision to this section associated with crediting licensee corrective action programs (CAP).

Proposed Revision:

2.3.2 Noncited Violation

~~If a licensee or nonlicensee has implemented a corrective action program that has been determined to be adequate by the NRC, the NRC will normally disposition SL IV violations and violations associated with green ROP or cROP findings (for operating reactors) are normally dispositioned as noncited violations (NCV) if all the criteria in Paragraph 2.3.2.a. are met.~~

~~For licensees and nonlicensees that are not credited by the NRC as having adequate have not received formal credit from the NRC for their corrective action programs, the NRC will normally disposition SL IV violations and violations associated with green ROP or cROP findings as NCVs if all of the criteria in Paragraph 2.3.2.b are met. If the SL IV violation or violation associated with Green ROP or cROP finding was identified by the NRC, the NRC will normally issue a Notice of Violation.~~

~~Inspection reports or inspection records document NCVs and briefly describe the corrective action the licensee or nonlicensee has taken or plans to take, if known. Licensees and nonlicensees are not required to provide written responses to NCVs; however, they may provide a written response if they disagree with the NRC’s description of the NCV or dispute the validity of the NCV. Typically, all of the criteria in either 2.3.2.a or b must be met for the disposition of a violation as an NCV.~~

~~For all SL IV violations identified by the NRC at fuel cycle facilities (under construction or in operation) in accordance with 10 CFR Part 70 or 10 CFR Part 40 and reactors under construction in accordance with 10 CFR Part 50 or 10 CFR Part 52, before the NRC determines that an adequate corrective action program has been implemented, the NRC normally issues a Notice of Violation. Until the determination that an adequate corrective action program has been implemented, NCVs may be issued for SL IV violations if the NRC has determined that the applicable criteria in 2.3.2.b. below are met. For reactor licensees, after the NRC determines that an adequate corrective action program has been implemented, the NRC will normally issue an NCV in lieu of an SL IV violation, whether that violation is identified by the licensee or the NRC.~~

2. Section 2.3.4 “Civil Penalty”

Recent cases involving the willful failure to file for reciprocity or to obtain an NRC specific license have led to discussions about the agency’s ability to deter future noncompliance in these areas and lessen the perceived potential economic benefit of working in NRC jurisdiction without the required notification or license.

Although the policy (Section 3.6, “Use of Discretion in Determining the Amount of a Civil Penalty”) allows the staff to exercise discretion to propose or escalate a civil penalty for cases involving willfulness, the staff proposes to add clarifying language to Section 2.3.4, “Civil Penalty.” To aid in implementation and ensure consistency, the policy proposes specific guidance on the typical or “starting” civil penalty amount (e.g., 2 times the base civil penalty).

Proposed addition in Section 2.3.4 after the paragraph starting: “The NRC considers civil penalties for violations...”

For cases involving the willful failure to either file for reciprocity or obtain an NRC-specific license, the NRC will normally consider a civil penalty to deter noncompliance for economic benefit. Therefore, notwithstanding the normal civil penalty assessment process, in cases where there is any indication (e.g., statements by company employees regarding the nonpayment of fees, previous violations of the requirement including those not issued by the NRC, or previous filings without a significant change in management) that the violation was committed for economic gain, the NRC may exercise discretion and impose a civil penalty. The resulting civil penalty will normally be no more than 3 times the base civil penalty; however, the agency may mitigate or escalate the amount based on the merits of a specific case.

3. Section 2.3.4 “Civil Penalty”

In regard to the 2-year lookback issue, the staff is recommending option “B” (see Recommendations in the Commission Paper and Enclosure 2, “2-Year Lookback.”) If the Commission approves this recommendation, a revision to this section will be required.

Proposed Revisions:

2.3.4.a. Did the licensee have any previous escalated enforcement action (regardless of the activity area) (except violations associated with ROP or cROP findings) within the past 2 years of the inspection at issue, or the period between the last two inspections, whichever is longer? When the NRC...

2.3.4.b.1.(c) the licensee has been issued at least one other escalated action during the past 2 years or 2 inspections, whichever is longer (except violations associated with ROP or cROP findings)

4. Addition of Section 3.10 “Reactor Violations with No Performance Deficiencies”

Section 2.2.4.d has been revised to clarify that violations with no ROP findings are dispositioned by using traditional enforcement. Section 3.10, “Operating Reactor Violations with No Performance Deficiencies” has been added for staff guidance to properly disposition these violations. The staff views this as a clarification that involves no actual change in policy.

Proposed Revisions:

~~2.2.4.d violations of NRC requirements for which there are no associated SDP performance deficiencies (e.g., a violation of TS which is not a performance deficiency). These violations are normally dispositioned using discretion, similar to that described in Section 3.2 of this Policy—violations not associated with ROP or cROP findings.~~

3.10 Reactor Violations with No Performance Deficiencies

The NRC may exercise discretion for violations of NRC requirements by reactor licensees for which there are no associated performance deficiencies (e.g., a violation of TS which is not a performance deficiency).

5. Section 6.0 “Violation Examples”

(a) Section 6.3 “Materials Operations”

The policy addresses the failure to secure a portable gauge as required by 10 CFR 30.34(i) under Section 6.3, “Materials Operations.” Specifically, paragraph 6.3.c.3, a Severity Level SL III violation example, states, “A licensee fails to secure a portable gauge with at least two independent physical controls whenever the gauge is not under the control and constant surveillance of the licensee as required by 10 CFR 30.34(i).” Accordingly, a violation of 10 CFR 30.34(i) constitutes a SL III violation for gauges having either no security or one level of security. The SL III significance is based largely on licensees’ control of portable gauges to reduce the opportunity for unauthorized removal or theft and is the only example currently provided in the policy for this type of violation.

When assessing the significance of a violation involving the failure to secure a portable gauge, the staff considers that both physical controls must be defeated for the portable gauge to be removed deterring a theft by requiring a more determined effort to remove the gauge. Considering that there is a reduced risk associated with having one barrier instead of no barrier, the staff believes that a graded approach is appropriate for 10 CFR 30.34(i) violations of lower significance. Therefore, the staff believes that certain failures to secure portable gauges warrant a SL IV designation. This graded approach was piloted in Enforcement Guidance Memoranda 11-004, dated April 28, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML111170601). After over 2 years of monitoring, it was determined that the addition of the SL IV example did not increase the number of losses/thefts reported. Therefore, the staff is proposing to modify the existing SL III example (6.3.c.3) and add the following SL IV example (6.3.d.10):

Proposed Revisions:

6.3.c.3 A licensee fails to secure a portable gauge ~~with at least two independent physical controls whenever the gauge is not under the control and constant surveillance of the licensee~~ as required by 10 CFR 30.34(i);

6.3.d.10 A licensee fails to secure a portable gauge as required by 10 CFR 30.34(i), whenever the gauge is not under the control and constant surveillance of the licensee, where one level of physical control existed and there was no actual loss of material, and that failure is not repetitive.

(b) Section 6.5.c.4 and 5 SL III violations involve, for example:
These examples (Section 6.5.c.4 and 5) were modified to reference the appropriate regulation governing changes to a facility referencing a certified design (i.e., 10 CFR 52.98). This regulation refers to applicable change processes in the applicable design certification rule, which are currently contained in 10 CFR Part 52, Appendix A-D.

Proposed Revisions:

4. A licensee fails to obtain prior Commission approval required by 10 CFR 50.59 or 10 CFR ~~Part 52, Appendix A-D~~52.98 for a change that results in a condition evaluated as having low-to-moderate or greater safety significance; or

5. A licensee fails to update the FSAR as required by 10 CFR 50.71(e), and the FSAR is used to perform a 10 CFR 50.59 or 10 CFR ~~Part 52, Appendix A-D~~52.98 evaluation for a change to the facility or procedures, implemented without Commission approval, that results in a condition evaluated as having low-to-moderate or greater safety significance.

(c) Section 6.5.d.5 SL IV violations involve, for example:
Violation example 6.5.d.5 was moved to Section 6.9.d “Inaccurate and Incomplete Information or Failure to Make a Required Report.”

Proposed Revision:

Delete example 6.5.d.5

(d) Section 6.9 “Inaccurate and Incomplete Information or Failure to Make a Required Report”

Section 50.55(e)(3) requires holders of a construction permit or combined license (until the Commission makes the finding under 10 CFR 52.103(g)) to adopt procedures to evaluate deviations and failures to comply to ensure identification of defects and failures to comply associated with substantial safety hazards as soon as practicable. This section is similar to the reporting requirements of 10 CFR Part 21. A SL II violation example was added; violation example 6.9.c.2.(a) was deleted; and the reference to regulation 10 CFR 50.55(e) was moved to the revised 6.9.c.5 examples.

Proposed Revisions:

b. SL II violations involve, for example:

8. ~~A deliberate failure to notify the Commission as required by 10 CFR 50.55(e).~~

c. SL III violations involve, for example:

2.(a) ~~failure to make required notifications and reports pursuant to 10 CFR 50.55(e);~~

5. A failure to provide the notice required by 10 CFR Part 21 or 10 CFR 50.55(e), for example:

(a) An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR Part 21 or 10 CFR 50.55(e) report would have been required; or

(b) A withholding of information or a failure to make a required interim report by 10 CFR 21.21, “Notification of Failure to Comply or Existence of a

Defect and Its Evaluation,” or 10 CFR 50.55(e) occurs with careless disregard.

- d. SL IV violations involve, for example:
 - 12. A licensee fails to make an interim report required by 10 CFR 21.21(a)(2) or under 10 CFR 50.55(e); or
 - 13. A licensee fails to implement adequate procedures that did not result in a failure to report 10 CFR Part 21 or 10 CFR 50.55(e) processes or procedures that have more than minor significance; or
 - 14. A materials licensee fails to ...

(e) Section 6.9 “Inaccurate and Incomplete Information or Failure to Make a Required Report”

The staff is proposing to remove the reference to 10 CFR 26.719(d) in violation example 6.9.c.2.(c) because Section 26.719(d) is not a reporting requirement.

Proposed Revision:

6.9.c.2.(c) Failure to make any report required by 10 CFR 73.71, “Reporting of Safeguards Events,” or Appendix G, “Reportable Safeguards Events,” to 10 CFR Part 73 “Physical Protection of Plants and Materials,” or 10 CFR Part 26, “Fitness-For-Duty Programs;” ~~except for 10 CFR 26.719(d);~~

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

The current policy examples for a SL IV violation in Section 6.11.d are focused on the loss of special nuclear material (SNM) of low strategic significance. The loss of SNM is too narrow of a focus on the loss of material and not the other aspects of the Materials Control & Accountability (MC&A) program that could be a precursor to a loss of SNM. The staff believes that the policy should include an example for the MC&A program at fuel facilities that covers the reduction in the ability to detect a loss or diversion of material which could lead to a more significant event.

Proposed Revision:

6.11.d.3 ~~A deficiency in the licensee’s materials control and accountability system that results in a fuel cycle facility General Performance Objective(s) procedure degradation regarding adequate detection or protection against loss, theft, or diversion of special nuclear material.~~

(g) Section 6.14 “Fitness-For-Duty” Violation Example 6.14.a.2

The staff is proposing to incorporate violation example 6.14.a.2 into example 6.14.b.1. An employee assistance program (EAP) is one provision of many contained in 10 CFR Part 26, Subpart B, for which 6.14.a.1 applies. Therefore, the “severity” associated with an inadequate EAP is significantly less than that of a licensee not meeting “two or more subparts of 10 CFR Part 26.” An ineffective implementation of an EAP does not directly result in an immediate safety or security concern and should not represent a SL I violation.

Proposed Revisions:

Delete Violation Example 6.14.a.2. ~~A licensee fails to substantially implement a licensee employee assistance program (EAP).~~

6.14.b.1 A licensee fails to remove an individual from unescorted access status when this person has been involved in the sale, use, or possession of illegal drugs within the protected area, or a licensee fails to take action in the case of an on-duty misuse of alcohol, illegal drugs, prescription drugs, or over-the-counter medications **or once the licensee identifies an individual that appears to be impaired or that their fitness is questionable, the licensee fails to take immediate actions to prevent the individual from performing the duties that require him or her to be subject to 10 CFR Part 26;**

(h) Section 6.14 “Fitness-For-Duty” Violation Example 6.14.b.2

In violation example 6.14.b.2 remove the language “unfitness for duty based on drug or alcohol use.” Regulations in 10 CFR Part 26 do not define unfitness and the behavioral observation program is not limited to drug and alcohol impairment.

Proposed Revision:

6.14.b.2 A licensee fails to take action to meet a regulation or a licensee behavior observation program requirement when observed behavior within the protected area or credible information concerning the activities of an individual indicates ~~possible unfitness for duty based on drug or alcohol use~~ **impairment by any substance, legal or illegal, or mental or physical impairment from any cause, which adversely affects their ability to safely and competently perform their duties.**

(i) Section 6.14 “Fitness-For-Duty” Violation Example 6.14.c.1

Violation example 6.14.c.1 should encompass more than positive drug and alcohol tests; it should include other aspects of the fitness-for-duty program such as subversions.

Proposed Revision:

6.14.c.1 A licensee fails to take the required action for a person ~~confirmed to have tested positive for illegal drug use or to take action for onsite alcohol use who has violated the licensee’s fitness-for-duty policy~~, in cases that do not amount to a SL II violation;

(j) Section 6.14 “Fitness-For-Duty” Violation Example 6.14.c.5

The staff originally proposed deleting 6.14.c.5 because it was to be incorporated in the proposed revision 6.14.b.1. However, the staff agreed with the Nuclear Energy Institute (NEI) comment (see Enclosure 3) and decided to revise example 6.14.c.5.

Proposed Revision:

6.14.c.5 A licensee’s EAP staff fails to notify licensee management when the EAP staff is aware that an individual’s condition, **based on the information known at the time**, may adversely affect safety or security of the facility **and the failure to notify did not result in a condition adverse to safety or security**; or

6. **Section 6.13 “Information Security”**

The staff is proposing to revise Section 6.13, “Information Security.” This revision will replace the current examples, which are based on the classification levels of the information, with a risk-informed approach for assessing the significance of information security violations. This approach of evaluating the significance of information security violations by using a risk-informed process is based on the actual or potential

significance of the information security violation and will more accurately reflect the severity of these types of violations and improve regulatory consistency.

This proposed process is the result of lessons learned from a number of violations that the NRC has processed over the last few years based on varying significance levels. This process will use a flow chart and table approach, along with defined terms.

Once a noncompliance is identified, a four-step approach will be applied to determine the significance level. The four steps are: (1) determine the significance of the information (i.e., high, moderate, or low), (2) determine the extent of disclosure (i.e., individual deemed trustworthy and reliable, unknown disclosure, or confirmed to an unauthorized individual), (3) determine the accessibility of the information (i.e., how limited was access to the information), and (4) determine the duration of the noncompliance (i.e., how long was the information available).

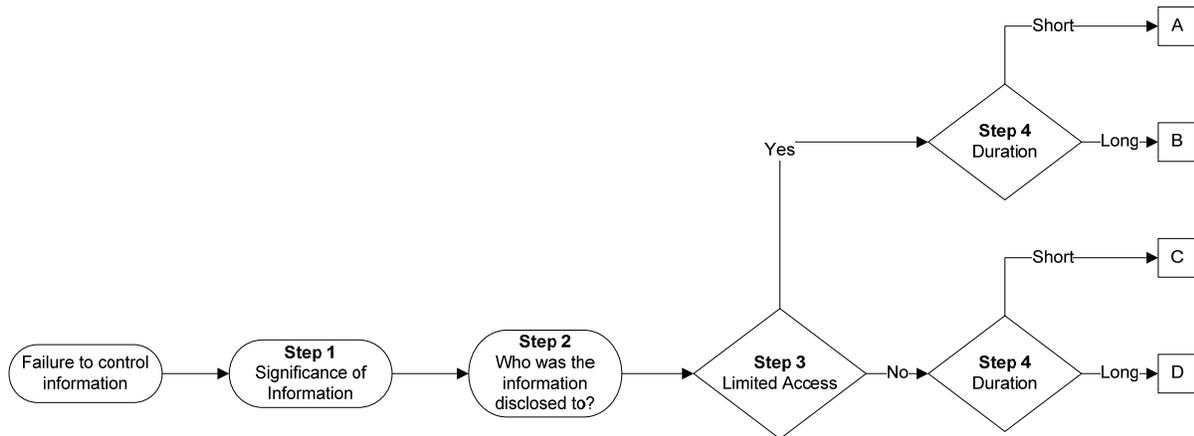
Once all steps are completed, the user will obtain a recommended severity level for the violation. The staff recognizes this approach as a change from the traditional violation examples; however, the new process will be risk-informed and will consider the significance of the information as it relates to public health and safety or the common defense and security regardless of the classification level. The proposed changes are located in Sections 4.3 and 6.13.

Proposed Revisions:

(a) Section 4.3 **“Civil Penalties to Individuals”**

Section 6.13, “Information Security,” of this Policy provides **a risk-informed approach for assessing the significance of information security examples of violations to help determine the severity levels of** violations.

(b) New flow chart and table for violation example 6.13.



Step 2 Disclosure		Disclosed to an individual deemed Trustworthy and Reliable				Unknown Disclosure				Confirmed to an Unauthorized Individual			
		A	B	C	D	A	B	C	D	A	B	C	D
Step 1 Significance	High	SL III	SL III	SL III	SL II	SL III	SL II	SL II	SL II	SL II	SL II	SL II	SL II
	Moderate	SL IV	SL III	SL III	SL III	SL IV	SL III	SL III	SL III	SL III	SL III	SL III	SL III
	Low	SL IV	SL IV	SL IV	SL III	SL IV	SL IV	SL IV	SL III	SL III	SL III	SL III	SL III

Step 1: Significance

High Significance: The totality of information that could reasonably cause an adverse effect on national security and provide a significant amount of information about a technology (i.e. key elements of a technology or system) or combinations of the following elements related to protective strategies: Response Strategy, Target Sets, Physical Security Plan, Contingency Plan or Integrated Response Plan. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data) or Safeguards.

Moderate Significance: The totality of information provides limited information within its classification that maybe useful for an adversary about technology information or physical security plan of a facility. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data), Safeguards, or information requiring protection under 10 CFR Part 37.

Low Significance: The totality of information was not particularly sensitive within its classification in that, taken by itself, the information would not aid an adversary in gaining information about a technology or physical security plan of a facility. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data), Safeguards, or information requiring protection under 10 CFR Part 37.

Step 2: Disclosure

Trustworthy and Reliable (T&R): Are characteristics of an individual considered dependable in judgment, character, and performance, such that disclosure of Information to that individual does not constitute an unreasonable risk to the public health and safety or

common defense and security. A determination of T&R for this purpose is based upon the results from a background investigation or background check in accordance with 10 CFR 37.5 or 10 CFR 73.2, respectively. To meet the T&R requirement, the individual must possess a T&R determination before the disclosure of the information, regardless of the “need to know” determination. Note: In accordance with 10 CFR 73.21 or 73.59, there are designated categories of individuals that are relieved from fingerprinting, identification and criminal history checks and other elements of background checks.

Unknown Disclosure: Instances when controlled information has been secured, protected, or marked improperly but there is no evidence that anyone has accessed the information while it was improperly handled.

Confirmed: Instances where a person who does not have authorization to access controlled information gains access to the information.

Electronic Media/Confirmed: For electronic media it is considered confirmed once the information is no longer on an approved network for that type of information.

Unauthorized Individual: A person who does not possess a T&R determination and a need to know.

Step 3: Limited Access

Hard Copy Format: A location provides limited access if it meets all of the following conditions:

- a. the area was locked or had access control measures, and;
- b. individuals that frequented the area were part of a known population, and;
- c. records of personnel entry were maintained to the area via key control or key card access.

Electronic Media: A computer network provides limited access if it meets all of the following conditions:

- a. the information is stored in a location that is still within the licensee’s computer network’s firewall, and
- b. the licensee has some type of control system in place which delineates who can access the information.

Step 4: Duration

Long: Greater than or equal to 14 days from the date of infraction to discovery of the non-compliance.

Short: Less than 14 days from the date of infraction to discovery of the non-compliance.

7. Glossary

(a) Confirmatory Action Letter

Some agency procedures have not consistently described all Confirmatory Action Letter (CAL) recipients, according to an audit of the NRC's use of CALs. To date, all affected procedures have been revised to incorporate a consistent definition with the exception of the policy.

Proposed Revision:

Confirmatory Action Letter (CAL) is a letter confirming a licensee's, contractor's, or nonlicensee's (subject to the NRC jurisdiction) voluntary agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

(b) Enforcement Guidance Memoranda

The description of Enforcement Guidance Memoranda was moved from Section 2.3.9 and placed into the Glossary Section. This does not involve a change in policy.

(c) Interim Enforcement Policy

The term Interim Enforcement Policy was added to the Glossary.

Proposed Addition:

Interim Enforcement Policy (IEP) refers to a policy that is developed by the NRC staff and approved by the Commission for specific topics, typically for a finite period. Generally, IEPs grant the staff permission to refrain from taking enforcement action for generic issues which are not currently addressed in the Policy and are typically effective until such time that formal guidance is developed and implemented or other resolution to the generic issue. IEPs can be found in Section 9.0 of the policy.

(d) Traditional Enforcement

Section 4 of this enclosure discusses that violations without ROP findings are dispositioned by using traditional enforcement. A conforming change is proposed in the definition of traditional enforcement.

Proposed Revision:

Traditional Enforcement, as used in this Policy, refers to the process for the disposition of violations of NRC requirements, including those that cannot be addressed only through the Operating Reactor Assessment Program. Traditional enforcement violations are assigned severity levels and typically include, but may not be limited to, those violations involving (1) actual safety and security consequences, (2) willfulness, (3) impeding the regulatory process, (4) discrimination, (5) **violations not associated with ROP or cROP findings, issues for which no ROP performance deficiency can be identified** (6) materials regulations, and (7) deliberate violations committed by individuals.

8. Minor Corrections/Administrative Changes

Note: The page numbers cited below correspond with Enclosure 6.

(a) Page 8: Subject to the same oversight as the regional offices, the Directors of the Office of Nuclear Reactor Regulation (NRR), the Office of Nuclear Material Safety

and Safeguards (NMSS), ~~the Office of Federal and State Materials and Environmental Management Programs (FSME)~~, the Office of New Reactors (NRO), and the Office of Nuclear Security and Incident Response (NSIR) may also approve, sign, and issue certain enforcement actions as delegated by the Director, of the Office of Enforcement (OE). The Director, OE, has delegated authority to the Directors of NRR, NMSS, ~~FSME~~, NRO, and NSIR to issue Orders not related to specific violations of NRC requirements (i.e., nonenforcement-related Orders.)

(b) Page 9: The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level appropriate to the safety **or security** significance of the particular violation.

Whenever possible, the NRC uses risk information in assessing the safety **or security** significance of violations and assigning severity levels. A higher severity level may be warranted for violations that have greater risk, safety, or security significance, while a lower severity level may be appropriate for issues that have lower risk, safety, or security significance.

(c) Page 15: a. Licensees and Nonlicensees with a **credited** Corrective Action Program

(d) Page 19: The flow chart (Figure 2) ~~presented below~~ is a graphic representation of the civil penalty assessment process **and has limitations in its ability to accurately depict this process. Therefore, the narrative in this section takes precedence over the graphical representation.**

(e) Page 32: ~~In addition,~~†The NRC may refrain from issuing an NOV for a SL II, III, or IV violation that meets the above criteria, provided that the violation was caused by conduct that is not reasonably linked to the licensee's present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and that there had not been prior notice so that the licensee could not have reasonably identified the violation earlier.

(f) Page 34: In addition, the NRC may refrain from issuing enforcement action for violations resulting from matters not within a licensee's control, such as equipment failures that were not avoidable by reasonable licensee QA measures or management controls **(e.g., reactor coolant system leakage that was not within the licensee's ability to detect during operation, but was identified at the first available opportunity or outage).**

(g) Page 42: 6.1.c.2 A system that is part of the primary success path and which functions or actuates to mitigate a DBA or transient that either assumes the failure of or presents a challenge to the integrity of the fission product barrier not being able to perform its licensing basis safety function because it is not fully qualified (per the IMC ~~Part 99000326~~, **"Operability Determinations & Functional Assessment for Conditions Adverse to Quality or Safety" ODP**) (e.g., materials or components not environmentally qualified);

(h) Page 43: 6.1.d.3 A licensee fails to update the FSAR as required by 10 CFR 50.71(e) ~~and but~~ the lack of up-to-date information has **a material impact on safety or licensed activities not resulted in any unacceptable change to the facility or procedures;**

(i) Page 58: 6.7.d.3 A radiation dose rate in an unrestricted or controlled area exceeds 0.002 rem (0.02 ~~milli~~ro sieverts) in any 1 hour (2 mrem/hour) or 50 mrem (0.5 mSv) in a year;