

DRAFT SUPPORTING STATEMENT FOR  
NOTICE OF ENFORCEMENT DISCRETION FOR  
OPERATING POWER REACTORS AND  
GASEOUS DIFFUSION PLANTS  
(NRC ENFORCEMENT POLICY)

EXTENSION

(3150-0136)

Description of the Information Collection

The Nuclear Regulatory Commission's (NRC) enforcement program is governed by its regulations. Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," Subpart B, "Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties," describes the formal procedures that the NRC uses to implement its enforcement authority.

It is NRC policy to hold licensees, certificate holders, and applicants responsible for the acts of their employees, contractors, or vendors and their employees, and the NRC may cite the licensee, certificate holder, or applicant for violations committed by its employees, contractors, or vendors and their employees.

When noncompliance with NRC requirements occurs, the NRC must evaluate the degree of risk posed by the noncompliance to determine whether immediate action is required. In these circumstances, a licensee or certificate holder may voluntarily request that the NRC exercise enforcement discretion and the NRC staff may choose to not enforce the applicable license or certificate condition. This enforcement discretion is designated as a Notice of Enforcement Discretion (NOED).

A licensee or certificate holder seeking the issuance of a NOED must document and submit to the NRC by letter, in accordance with Inspection Manual Chapter 0410 (ADAMS Accession No. ML13071A487), the safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed request, a description of proposed compensatory measures, a justification for the duration of the request, the basis for the licensee's or certificate holder's conclusion that the request does not have a potential adverse impact on the public health and safety, and does not involve adverse consequences to the environment, and any other information the NRC staff deems necessary before making a decision to exercise discretion.

The Enforcement Policy of the U.S. Nuclear Regulatory Commission (NRC) includes the circumstances in which the NRC may grant a notice of enforcement discretion (NOED). On occasion, circumstances arise when a power plant licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or any other license condition would involve an unnecessary plant shutdown. Similarly, for a gaseous diffusion plant (GDP), circumstances may arise where compliance with a Technical Safety Requirement (TSR) or other condition would unnecessarily call for a total plant shutdown, or, compliance would unnecessarily place the plant in a condition where safety, safeguards, or security features were degraded or inoperable.

In these circumstances, a licensee or certificate holder may request that the NRC exercise enforcement discretion and the NRC staff may choose to not enforce the applicable TS, TSR, or other license or certificate condition. This enforcement discretion is designated as a NOED.

A licensee or certificate holder seeking enforcement discretion must verbally request so and then, subsequently document and submit to the NRC by letter in accordance with the NRC's Enforcement Policy, as implemented by Inspection Manual Chapter 0410. The request includes the safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed request, a description of proposed compensatory measures, a justification for the duration of the request, the basis for the licensee's or certificate holder's conclusion that the request does not have a potential adverse impact on the public health and safety, and does not involve adverse consequences to the environment, and any other information the NRC staff deems necessary before making a decision to exercise discretion.

## A. JUSTIFICATION

### 1. Need for and Practical Utility of the Collection of Information

The Commission believes that the NRC staff needs the authority information to quickly exercise discretion in this area in order to avoid unnecessary plant shutdowns, to minimize both operational and shutdown risk, or to avoid unnecessary delays in plant startup where the course of action involves minimal or no safety impact on the public health and safety. Exercise of enforcement discretion may be appropriate only where the exercise of discretion is temporary and nonrecurring. The NRC might approve a NOED where a license or certificate amendment is not appropriate for the expected noncompliance. It may also be appropriate to approve a NOED for the brief period of time it requires for the NRC staff to process an exigent TS amendment under the provisions of 10 CFR 50.91(a)(6), or to process an amendment to change a TSR or certificate condition under the provisions of 10 CFR Part 76.

### 2. Agency Use of Information

The agency will use the information voluntarily provided by a licensee or certificate holder to determine if the exercise of enforcement discretion is clearly consistent with protecting the public health and safety, and there is no potential for adverse consequences to the environment as evaluated by IMC 0410.

### 3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. The NRC encourages respondents to use information technology when it would be beneficial to them. The NRC has issued Guidance for Electronic Submissions to the NRC which provides direction for the electronic transmission and submittal of documents to the NRC. Electronic transmission and submittal of documents can be accomplished via the following avenues: the Electronic Information Exchange (EIE) process, which is available from the

NRC's "Electronic Submittals" Web page, by Optical Storage Media (OSM) (e.g. CD-ROM, DVD), by facsimile or by e-mail. It is estimated that approximately 65% of the potential responses are filed electronically as that is roughly the number of licensees who participate in the EIE process.

4. Efforts to Identify Duplication and Use Similar Information

No sources of similar information are available. There is no duplication of requirements.

This information is only necessary when a licensee or certificate holder seeks the issuance of a NOED. There is no other time the relevant information is required to be submitted, and there is no source for the information other than licensees or certificate holders.

5. Effort to Reduce Small Business Burden

Not applicable.

6. Consequences to the Federal Program or Policy Activities if the Collection is Not Conducted or is Conducted Less Frequently

This action is strictly voluntary and information is required only upon the licensee's or certificate holder's request for enforcement discretion or a request to transition to NFPA 805.

The impact of this information collection on each licensee or certificate holder is inconsequential in comparison with the alternative: follow license or certificate conditions, cease power operations, and either shut down the plant; perform testing, inspection, or system realignment that is inappropriate for the specific plant conditions; or delay plant startup. Requesting that the NRC staff exercise enforcement discretion is strictly a voluntary option for all licensees and certificate holders.

7. Circumstances Which Justify Variation From OMB Guidelines

This action does not vary from OMB guidelines.

8. Consultations Outside the NRC

Opportunity for public comment on the information collection requirements for this clearance package has been published in the *Federal Register*.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Confidential and proprietary information is protected in accordance with NRC regulations under 10 CFR 9.17(a) and 10 CFR 2.390(b).

No confidential information is required, except for proprietary information, which would be handled in accordance with 10 CFR 2.390.

11. Justification for Sensitive Questions

Not applicable.

12. Estimate of Industry Burden and Burden Hour Cost

Since requesting a NOED is voluntary, only an estimate can be made of the number of licensees and certificate holders choosing to implement its requirements. Over the last three clearance cycles, the NRC has received on average 4 request annually from power plant licensees and 0 request from GDP certificate holders; therefore, the NRC staff estimates that 4 power plant licensees and 0 GDP certificate holder will request 1 NOED annually. The burden estimate per request is 150 hours; the annual burden is 600 hours (4 licensees/certificate holders x 150 hours).

The total annual reporting burden is 600 hours (150 x 4 = 600).

As a result of requesting a NOED, there is an implied recordkeeping burden. This recordkeeping burden is estimated at 80 hours (20 hours per recordkeeper) for maintaining a copy for the licensees' records. It is also anticipated that most licensees will maintain a copy for their records.

The total annual burden is 680 hours. The total cost at \$265 an hour is \$180,200 (680 hours x \$265/hr).

Total Burden/Cost: 680 hours (600 hrs reporting + approximately 80 hrs recordkeeping)/\$180,200

Total Respondents: 4 (4 licensees requesting NOEDs)

Total Responses: 8 (4 responses and 4 recordkeepers)

13. Estimate of Other Additional Costs

NRC has determined that the records storage cost is roughly proportional to the recordkeeping burden cost. Based on a typical clearance, the records storage cost has been determined to be equal to 0.0004 percent of the recordkeeping

burden cost. Therefore, the records storage cost for this clearance is \$9 (80 x 0.0004 x \$265/hour).

14. Estimated Annual Cost to the Federal Government

The estimated annual burden to the government for reviewing licensee and certificate holder requests for enforcement discretion is 40 hours per request. Approximately 4 licensees and 0 certificate holder are expected to request 1 enforcement discretion each year. Therefore, the burden is estimated at 160 hours (4 licensees/certificate holders x 40 hours). The cost at \$265 an hour is \$42,400.

This cost is fully recovered through license and certificate fees assessed to NRC licensees and certificate holders pursuant to 10 CFR Part 170 and/or 10 CFR Part 171.

15. Reasons for Change in Burden or Cost

The burden has decreased from 1,492 hours to 680 hours, the decrease is due to the staff reviewing the historical data of the last three clearance cycles which supports reducing the annual estimate of NOED submittals to 4; a decrease of 3 power plant licensees and no expected submittals from GDP certificate holders; additionally, the fee rate has changed from \$272 to \$265 per hour for this clearance cycle.

16. Publication for Statistical Use

None.

17. Reason for Not Displaying the Expiration Date

The requirement is contained in the NRC Enforcement Policy. Revising the Enforcement Policy to update the expiration date unnecessarily expends scarce agency resources.

18. Exceptions to the Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.