

DCJ
PDR



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

MAR 23 1993

EGM 93-004

MEMORANDUM FOR: Thomas T. Martin, Regional Administrator
Region I
Stewart D. Ebnetter, Regional Administrator
Region II
A. Bert Davis, Regional Administrator
Region III
James L. Milhoan, Regional Administrator
Region IV
John B. Martin, Regional Administrator
Region V
James Partlow, Associate Director for
Projects, NRR
William T. Russell, Associate Director for
Inspection and Technical Assessment, NRR
Robert Burnett, Director, Division of
Safeguards and Transportation, NMSS
Richard E. Cunningham, Director, Division of
Industrial and Medical Nuclear Safety, NMSS

FROM: James Lieberman, Director
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - NOTICES OF
ENFORCEMENT DISCRETION (Enforcement Manual
Section 6.3.2)

On March 17, 1993 the enclosed change to the Enforcement Policy was published in the Federal Register (58 FR 14308). The change incorporates into the policy the circumstances in which the staff may exercise enforcement discretion for reactor licensee Technical Specifications or other license conditions (Notice of Enforcement Discretion) by adding Section VII.C. Previously, the procedures governing the exercise of such discretion were contained in a staff guidance document and the use of such discretion was referred to as a Temporary Waiver of Compliance.

Enclosed is also interim guidance from NRR for issuance of Notices of Enforcement Discretion (NOED). The final guidance when in place, will be located in the Inspection Manual.

From an enforcement perspective, the most important part of the policy change is that enforcement action normally is to be taken for the root cause(s), to the extent violations were involved, that led to the licensee's request for enforcement discretion. As provided in the Enforcement Policy, such enforcement actions will emphasize to licensees that they should not rely on the

9404060064 930723
PDR I&E
MANUAL PDR

040067

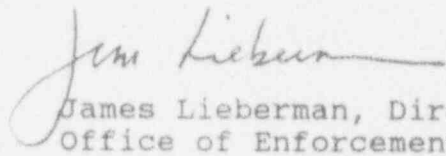
[Handwritten signature]
F03
1/1

MAR 29 1993

2

NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment. In each case that an NOED is issued where the root cause of the need to request an NOED was a violation, an EA number is to be obtained from OE. OE approval is required for not issuing some enforcement action, including a non cited violation, if a violation is involved. A non cited violation should not normally be used where a shutdown would have been required but for the issuance of the NOED. The enforcement action should reference the NOED number.

Please call me if you have any questions or comments.


James Lieberman, Director
Office of Enforcement

Enclosures: As stated

cc: J. Sniezek, DEDR
H. Thompson, DEES
J. Goldberg, OGC
T. Gody, NRR
M. Cutchin, OGC
J.R. Hall, NRR

day's production of a producer's milk be physically received at a pool distributing plant during the month to be eligible for diversion to a nonpool plant. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by February 23, 1993. One written comment was received that discussed the nature of the proposed suspension. The comment included full support of the suspension of rule, as published in the Federal Register.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1106.13, paragraph (d)(1) in its entirety.

Statement of Consideration

This action suspends a certain provision of the Southwest Plains Federal milk order from February 1, 1993, through August 31, 1993. This action suspends the requirement that producers must deliver to a pool plant at least one day's production during the month in order for the remainder of their milk to be eligible for diversion to an unregulated manufacturing plant. This provision was suspended for the same period in 1992. This suspension is necessary to insure that dairy farmers who have historically supplied the Southwest Plains market will continue to have their milk priced under the Southwest Plains order, thereby receiving the benefits that accrue from pooling. This suspension thus will avoid uneconomic and inefficient movement of milk for the sole purpose of establishing eligibility for pooling under the order.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association operating under the Southwest Plains order. Mid-Am requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers historically associated with the Southwest Plains Order. Mid-Am also filed comments supporting the proposed suspension.

Producer receipts under the Southwest Plains Order were 1.6% higher on an average daily basis in 1992 compared to 1991. Class I utilization in 1992 was 38.7%, which was lower than the Class I utilization in 1991 and 1990 of 39.3% and 41.7%, respectively.

It is projected that there will be ample supplies of direct-ship producer milk which is located in the general area of

the Southwest Plains distributing plants to meet their fluid milk needs. Therefore, there is no need for producers historically associated with the Southwest Plains Order, but whose farms are more distant from distributing plants, to be received one time during the month at such plants for the sole purpose of meeting pooling requirements. Instead, their milk can more economically be diverted directly to manufacturing plants in the production area.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment in support of the suspension was received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

It is therefore ordered, that the following provision in title 7, part 1106, § 1106.13, paragraph (d)(1) of the Southwest Plains order is hereby suspended from February 1, 1993, through August 31, 1993.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR part 1106 continues to read as follows:

Authority: Secs. 2-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1106.13 [Temporarily suspended in part].

2. In § 1106.13, paragraph (d)(1) is suspended in its entirety.

Dated: March 11, 1993.

Kenneth C. Layton,
Acting Assistant Secretary, Marketing and
Inspection Services.
[FR Doc. 93-049 Filed 3-16-93; 8:45 am]
BILLING CODE 316-05-01

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AE57

Policy and Procedure for NRC Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement. Modification.

SUMMARY: The NRC is modifying its Enforcement Policy to describe more fully the circumstances in which it may exercise enforcement discretion.

DATES: This modification is effective on March 17, 1993. Comments received by April 16, 1993 will be considered. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received during the 30-day period following issuance.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of comments received may be examined at: the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Office of Enforcement, telephone (301) 504-2741 or J. Randall Hall, Office of Nuclear Reactor Regulation, telephone (301) 504-1336, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

Background

In July 1985, the NRC staff issued internal guidance to address situations where a reactor licensee's compliance with a Technical Specification (TS) or other license condition may cause an unnecessary plant transient or unnecessarily prevent plant startup and where, in such instances, the temporary exercise of discretion by the NRC not to enforce compliance may be appropriate. That guidance has been revised

periodically with the latest revision having been made in February 1990.

The circumstances in which the NRC staff may exercise enforcement discretion have been generally described in section VII of the Enforcement Policy (10 CFR part 2, appendix C). In order to consolidate the description of all circumstances where enforcement discretion may be exercised into one location, the Commission has determined that a discussion of the possibility of enforcement discretion for TS or other license condition compliance should also be placed in section VII of the Enforcement Policy. In addition, Section VIII of the Enforcement Policy is being modified to make it clear that actions taken by licensee employees pursuant to such an exercise of discretion will not result in enforcement action against the individuals involved. Finally, to reflect the information collection requirements of this change, 10 CFR 2.8 is being amended to reference that fact.

The Commission believes that the exercise of enforcement discretion in this area is warranted to avoid unnecessary plant transients, to reduce both operational and shutdown risk, and to avoid unnecessary delays in plant startup where the course of action involves minimal or no safety impact and the NRC staff is clearly satisfied that the exercise of discretion is consistent with the public health and safety.

Exercise of enforcement discretion is appropriate only where the exercise of discretion is temporary and nonrecurring. The appropriate Regional Administrator or his designee might exercise discretion where the expected noncompliance is of such short duration that a license amendment could not be issued before the need no longer exists, making it impractical to amend the license. It may also be appropriate to exercise discretion for the brief period of time it requires the NRC staff to process an emergency or exigent TS amendment under the provisions of 10 CFR 50.91(a) (5) or (6). Enforcement discretion in these cases would be exercised by the Director, Office of Nuclear Reactor Regulation, or his designee.

A licensee who requests the NRC to forego enforcement of a TS or other license condition must document the safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed course of action, a description of compensatory measures, a justification for the duration of the request, the basis for the licensee'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.

In each case where the NRC staff has decided to exercise its enforcement discretion, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance at issue. Such enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Since this action concerns a general statement of policy, no prior notice is required and, therefore, this modification to the Enforcement Policy is effective March 17, 1993.

Paperwork Reduction Act Statement

This Policy Statement contains information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget under control number 3150-0136.

The public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0136) Office of Management and Budget, Washington, DC 20503.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

Accordingly, the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, 1, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. In § 2.8, paragraph (b) is revised to read as follows:

§ 2.8 Information collection requirements: OMB approval.

(b) The approved information collection requirements contained in this part appear in appendix C.

3. In appendix C, a heading reading "Table of Contents" is added directly before the table of contents and a new heading for Section VII.C is added to the Table of Contents to read:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

Table of Contents

C. Exercise of Discretion for an Operating Facility

4. In Appendix C, Section VII, is added to read as follows:

VII. Exercise of Discretion

C. Exercise of Discretion for an Operating Facility

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. A licensee seeking the exercise of enforcement discretion must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether or not to exercise enforcement discretion.

The appropriate Regional Administrator, or his designee, may exercise discretion where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation, or his designee, may exercise discretion if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). The person exercising enforcement discretion will document the decision.

For an operating plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit,

provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the NRC staff has chosen to exercise enforcement discretion, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego enforcement is discretionary. Where enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

3. Appendix C, Section VIII is amended by revising the last example under the paragraph involving individual enforcement actions. For the convenience of the user, the introductory paragraph concerning individual enforcement actions is reprinted without change.

VIII. Enforcement Actions Involving Individuals

Listed below are examples which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual. However, violations involving willful conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against the licensee that may impact the individual. The situations include, but are not limited to, violations that involve:

Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other license conditions (enforcement action for a willful violation will not be taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10

CFR 50.54 (x), i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)

Dated at Rockville, Maryland, this 10th day of March 1993.

For The Nuclear Regulatory Commission,
Samuel J. Chalk,

Secretary of the Commission.

[FR Doc. 93-4155 Filed 3-16-93; 8:45 am]

BILLING CODE 7890-01-P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1993-11]

Transfers of Funds From State to Federal Campaigns

AGENCY: Federal Election Commission.

ACTION: Revised implementation plan for new rule governing state to federal transfers.

SUMMARY: On January 8, 1993 the Commission republished the text of a new rule governing transfers of funds from state to federal campaigns, and announced that this rule had been retransmitted to Congress for legislative review. 58 FR 3474 (January 8, 1993). The new rule prohibits the transfer of funds from state to federal campaign committees. This rule is still pending before Congress. However, the Commission has revised its plan for implementing the rule. Further information is provided in the supplementary information that follows.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Proper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On January 8, 1993, the Commission republished the text of a new rule governing transfers between state and federal campaign committees, and announced that this rule had been retransmitted to Congress for legislative review. 58 FR 3474 (January 8, 1993). The new rule at 11 CFR 110.3(d) will prohibit transfers of funds or other assets from a candidate's campaign committee or account for any nonfederal election to his or her principal campaign committee or other authorized committee for a federal election.

Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of title 2 be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative

ISSUANCE OF A NOTICE OF ENFORCEMENT DISCRETION

1.0 PURPOSE AND SCOPE

To provide guidance to the Regional Offices and to members of the Office of Nuclear Reactor Regulation (NRR) on the process for noticing the NRC's intent to exercise enforcement discretion with regard to technical specification limiting conditions for operation (TS LCOs) or other license conditions. The exercise of enforcement discretion may be warranted to (1) avoid unnecessary plant transients, (2) to reduce both operational and shutdown risk and (3) to avoid unnecessary delays in plant startup. In each case, the exercise of enforcement discretion is appropriate only where it is temporary and nonrecurring and where the course of action involves minimal or no safety impact and the NRC staff is clearly satisfied that the exercise of discretion is consistent with protecting the public health and safety.

- (1) In cases which do not involve an amendment to the license, the Regions have the lead to exercise enforcement discretion with regard to compliance with TSs or other license conditions. However, in instances where the need for an exercise of enforcement discretion would exceed 14 days, an amendment to the license should be issued, with NRR having lead responsibility for the exercise of enforcement discretion.
- (2) In instances involving an amendment to the license, NRR has the lead to exercise enforcement discretion with regard to compliance with TSs or other license conditions. NRR also has the lead to exercise enforcement discretion with regard to issues of a generic nature, whether or not an amendment to the license is warranted.

In both cases, a violation of the operating license will occur but the NRC is noticing its intention to exercise discretion not to enforce compliance with the operating license for a specified time period. This guidance supersedes and obviates the NRC's previous practice of granting temporary waivers of compliance with regard to TS LCOs or other license conditions. This guidance implements the recent revisions to Section VII.C. of the Enforcement Policy (10 CFR Part 2, Appendix C) 58 FR 14309 (March 17, 1993).

2.0 BACKGROUND

A licensee may depart from its TSs in an emergency, pursuant to the provisions of 10 CFR 50.54(x), without prior NRC approval, when it must act immediately to protect the public health and safety. However, situations occur occasionally which are not addressed by the provisions of 10 CFR 50.54(x), and for which the NRC's exercise of enforcement discretion may be appropriate. Provided that the licensee has not abused the emergency provisions of 10 CFR

50.91 by failing to apply for an amendment in a timely manner, it is appropriate that the NRC have a procedure for expeditious notice to a licensee of NRC's intentions to exercise enforcement discretion under limited circumstances. Actions taken by licensee employees pursuant to such an exercise of discretion will not result in enforcement against the individuals involved.

For an operating plant, the exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to minimize shutdown risk by avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that it does not provide an overall safety benefit or may, in fact, be detrimental to safety in the particular plant condition.

The exercise of enforcement discretion for plants attempting to startup is expected to occur less often than for operating plants, as simply delaying startup does not usually leave a plant in a condition in which it could experience undesirable transients. When enforcement discretion is exercised to avoid a startup delay, it is to be exercised with respect to equipment or systems only when the NRC staff has at least concluded that, notwithstanding the conditions of the license:

1. The equipment or system does not perform a safety function in the mode in which operation is to occur; or,
2. The safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or,
3. The TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The NRC staff is expected to exercise enforcement discretion infrequently. Although a plant must be shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego enforcement is discretionary. Where enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety standpoint. Enforcement discretion must be exercised on a case-by-case basis, considering the individual plant circumstances.

If the NRC decides not to exercise enforcement discretion, the licensee must take the action required by the TS (except as provided in 10 CFR 50.54(x)). However, the NRC staff and the licensee should be sensitive to special circumstances in which literal compliance with the TSs may not be in the best interest of the public health and safety. Normally, in such circumstances, NRC should grant a request for exercising enforcement discretion to allow for the conduct of an orderly shutdown, where a shutdown is required. Similarly,

NRC should grant a request for exercising enforcement discretion where more than one unit is involved to allow for a sequential shutdown. (See also section 6.1).

Careful regulatory scrutiny must be given to any deviation from the required actions of the TSs or other license conditions for circumstances involving violations (e.g., missing a required surveillance, inadequate procedures, or lack of testing) or poor planning (e.g., a necessary repair part not available) or misinterpretation of a TS, or some similar avoidable situation. Such instances may be indicative of a more pervasive problem with the plant or its management and should be identified and conveyed to the licensee via existing procedures. The Enforcement Policy provides that normally enforcement action will be taken for the root causes to the extent requirements were involved that led to the reason for requesting the exercise of discretion. (See section 6).

3.0 REGIONAL ENFORCEMENT DISCRETION

A Region issued Notice of Enforcement Discretion (NOED) is used to notify the licensee of the NRC's decision to exercise discretion not to enforce compliance with specific TS LCOs or other license conditions in the limited circumstances described in section 2, above, when the noncompliance is nonrecurring and a license amendment would not be appropriate because the plant will return to compliance with the existing license in a relatively short period of time. The NRC's decision to exercise enforcement discretion is intended to promote safety by not imposing unnecessary actions on an operating plant or by permitting a reactor startup which would otherwise be precluded by TSs under those circumstances where the proposed course of action involves minimal or no safety reduction. Matters a regional exercise of enforcement discretion may address include:

1. a noncompliance of short duration from the limits of a function specified in an LCO,
2. a noncompliance with an action statement time limit, or
3. a noncompliance with a surveillance interval or a one-time deviation from a surveillance requirement.

In each of these situations, it must also be evident that (1) a TS change is impractical, and (2) the licensee will return to compliance with the existing license requirements in a relatively short period of time.

The authority to exercise enforcement discretion is assigned to the Regional Administrator, who may delegate the authority to the Regional Division Director for Reactor Projects. The NOED shall be based on a written request (the Region may act on an oral request, to be promptly followed by a written request) from a licensee. Before issuing a NOED, the Region should consult with and receive concurrence from the appropriate Assistant Director for Projects, NRR. Whenever Regional enforcement discretion is exercised, the circumstances (including a description of any compensatory measure(s) and an evaluation of the request by the staff) must be documented in a letter to the licensee from the Regional Administrator or his/her designated official. The letter shall specify the maximum period of time for which the enforcement

discretion is in effect (not to exceed 14 days, except in unusual circumstances); however, resolution of the condition which led to the request for enforcement discretion should end the period of discretion. The letter should follow the format and content of the NOED letter attached to this guidance, and shall normally be issued within 2 working days of receipt of the licensee's written request. The NRC's intention to exercise discretion not to enforce compliance may also be communicated orally, followed by written documentation.

4.0 NRR ENFORCEMENT DISCRETION

An NRR issued NOED is used to notify the licensee of the NRC's decision to exercise discretion not to enforce compliance with specific TS LCOs or other license conditions in the limited circumstances described in section 2, above, when the noncompliance would be of a recurring nature so as to require a change to the license. The license amendment associated with the NOED should be processed as an emergency or exigent TS amendment under the provisions of 10 CFR 50.91(a)(5) or (6) and should follow NRR Office Letter No. 101 for signature authority guidance. Matters a NRR exercise of enforcement discretion may address include:

1. a noncompliance with an element specified in a limiting condition for operation until such time as the element can be revised by a license amendment; and
2. a noncompliance with an action statement time limit for which a license amendment will be processed to make the extension a permanent change to the TSs; and
3. a noncompliance with a surveillance interval or change to a surveillance requirement that will be incorporated by an amendment.

The authority to exercise enforcement discretion is delegated to the appropriate Assistant Director for Projects, NRR. The NOED shall be based on a written request (or in some cases, an oral request followed by a written request) from a licensee. Before issuing a NOED, NRR should consult with and receive concurrence from the responsible Regional Division Director for Reactor Projects. In addition, NRR Projects should obtain the concurrence of the appropriate NRR ADT Division Director or designee. Concurrence from the Office of the General Counsel (OGC) is not required. Whenever NRR enforcement discretion is exercised, the circumstances (including a description of any compensatory measure(s) and an evaluation of the request by the staff) must be documented in a letter to the licensee from the appropriate Assistant Director for Projects, NRR. The letter shall specify the maximum period of time for which the exercise of enforcement discretion is in effect (resolution of the condition which led to the request would return the licensee to a condition of compliance with the license), should follow the format and content of the NOED letter attached to this guidance, and shall normally be issued within 2 working days of the receipt of the licensee's written request. The NRC's intention to exercise discretion not to enforce compliance may also be communicated orally, followed by written documentation.

5.0 LICENSEE'S REQUEST

The licensee's written request shall include a discussion of the following:

1. The TS or license condition that will be violated;
2. The circumstances surrounding the situation, including the need for prompt action;
3. The safety basis for the request that enforcement discretion be exercised, including an evaluation of the safety significance and potential consequences of the proposed course of action;
4. Any proposed compensatory measure(s);
5. The justification for the duration of the request;
6. The basis for the licensee's conclusion that the request will not have a potential adverse impact on the public health and safety and that a significant safety hazard is not involved;
7. The basis for the licensee's conclusion that the request will not involve adverse consequences to the environment;
8. A statement that the request has been approved by the facility's organization tasked to review safety issues; and
9. Any other information the NRC staff deems necessary before making a decision to exercise enforcement discretion.

The licensee's request should normally be sent by facsimile to the Assistant Director for Projects, NRR, and the Regional Administrator. However, if NRC determines circumstances do not permit time for the written request to be prepared and sent to the NRC, the licensee may make the request orally, describing to the best of its ability the information required by the staff. The licensee's oral request shall be followed promptly by written documentation (usually within 24 hours) addressing the criteria described above. The licensee's oral and/or written request must also be reviewed and approved by the facility organization normally tasked to review safety issues (e.g., Plant Operations Review Committee) prior to submittal to the NRC. In cases where a license amendment is appropriate, the written request for the exercise of enforcement discretion should be accompanied by the licensee's request for an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). Such a license amendment request should include a discussion of the bases for the licensee's conclusions that the amendment does not involve a significant hazards consideration or irreversible environmental consequences.

If the request is oral (to be followed with a written request), the NRC must have sufficient information to reach the same conclusions as if it received a written submittal. The followup written request must confirm the information which the NRC relied upon in arriving at its conclusion to exercise enforcement discretion.

There may be cases when a plant is in a TS LCO action statement (such as TS 3.0.3) and the licensee does not have much time to prepare a detailed request for the exercise of enforcement discretion. Nevertheless, any request for an extension of an LCO action statement must also be treated as a request for the exercise of enforcement discretion, although the justification for a brief extension to an LCO action statement may not need to be as extensive as the justification for continued operation for many other situations. Such requests for the exercise of enforcement discretion may be made and granted orally, and followed promptly by the appropriate documentation, as previously described. Therefore, in certain unusual circumstances, a licensee may need to request an initial exercise of enforcement discretion in order to have sufficient time to subsequently request the exercise of enforcement discretion for a more complex issue.

6.0 ENFORCEMENT

6.1 Termination of Enforcement Discretion

If the NRC decides to terminate the exercise of enforcement discretion for any reason prior to the time specified in the initial notice of enforcement discretion, the licensee must take steps to achieve the appropriate plant status and implement the existing TS-required actions immediately upon oral notification of the termination by the appropriate Assistant Director, NRR, or Regional Division Director. Action statement time will be calculated from the time the condition requiring the exercise of enforcement discretion originally existed, not from when the exercise of enforcement discretion is terminated. For example, the licensee should promptly initiate an orderly shutdown or other required TS actions if the action statement has lapsed during the period of the exercise of enforcement discretion. Alternately, if the decision to exercise enforcement discretion was issued at the beginning of an action statement time period and the exercise of enforcement discretion is terminated before the time period has elapsed, the licensee has the remainder of the action statement time period to achieve compliance. However, there may be instances where the remaining time period is insufficient for the required action to be completed in the most prudent manner considering safety. For example, an orderly plant shutdown should normally be conducted versus manually tripping the reactor, even though the action statement time limit may be exceeded.

Upon notification of termination of the exercise of enforcement discretion, the licensee should inform the NRC of the proposed course of action to restore the plant to a condition of compliance with the TSs. The termination of the exercise of enforcement discretion by the NRC should be documented in a letter to the licensee and should address the actions taken or planned by the licensee, particularly for those cases where an action statement time limit may be exceeded based on a determination that the proposed course of action is in the best interests of safety.

6.2 Consideration of Enforcement

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that led to the violation being addressed by the NOED. In each case where the staff has chosen to exercise enforcement

discretion, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which the NOED was issued. The enforcement action in this circumstance is intended to emphasize that a licensee should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or requesting a license amendment. The particular enforcement action to be take is governed by the guidance in the Enforcement Manual.

The NRC will not normally take enforcement action for the time period where the action statement lapsed during the period specified in the NOED and then the exercise of enforcement discretion was terminated, or for the time period where the remaining action statement time period following the termination of the exercise of enforcement discretion did not allow for the completion of required actions in the most prudent manner considering safety provided the licensee took prompt corrective action to regain compliance including an orderly shutdown if required.

7.0 DISTRIBUTION

Copies of the letter to the licensee should be distributed following established Regional and NRR procedures. Further, as a minimum, distribution shall include the following;

1. Regional Administrator,
2. Associate Director for Projects, NRR,
3. Associate Director for Inspection and Technical Assessment, NRR,
4. Division Director, Division of Reactor Projects (E or W), NRR,
5. Director, Office of Enforcement,
6. the PDR and LPDR, and
7. Technical Assistant, Division of Reactor Projects - I/II, NRR

The Technical Assistant, Division of Reactor Projects - I/II, NRR, will maintain a file of all Notices of Enforcement Discretion.

8.0 TRACKING OF NOTICES OF ENFORCEMENT DISCRETION

Each NOED will be assigned a number to permit tracking. The issuing office will assign a number consisting of six digits, the first two digits are the year, the third digit being the region(6 for NRR), and the last three digits being the sequential number of the NOED in the issuing office. For example NOED 93-3-037 is the 37th NOED in Region 3 in calendar year 1993.

9.0 SUMMARY

The Regions may exercise enforcement discretion in certain circumstances when a licensee will not be in compliance with TSs or other license conditions for those cases in which a license amendment is not appropriate, because of the nonrecurring nature of the situation and because the plant will be returned to a condition of compliance with the existing license in a relatively short period of time.

NRR may exercise enforcement discretion in certain circumstances when a licensee will not be in compliance with the TSs or other license conditions and a license amendment is appropriate. NRR also has the lead to exercise

enforcement discretion with regard to issues of a generic nature, whether or not an amendment to the license is warranted.

If a TS will be violated before a decision can be made to exercise enforcement discretion, or if the NRC decides not to exercise enforcement discretion, the licensee must take the action required by the TS (except as provided in 10 CFR 50.54(x)). The exercise of enforcement discretion is an option available to the NRC staff that must not be exercised unless the staff is clearly satisfied that the exercise of such action is consistent with the public health and safety. Notwithstanding the decision to exercise enforcement discretion, enforcement action is to be normally taken in accordance with the Enforcement Policy for violations that led to the situation that warranted the exercise of enforcement discretion.

ATTACHMENT

Docket No(s). XX-XXX
NOED No. XX-X-XXX

ADDRESSEE

LICENSEE _____:

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR (LICENSEE)
REGARDING (PLANT)

By letter dated _____, you requested the U.S. Nuclear Regulatory Commission (NRC) to exercise its discretion not to enforce compliance with the required actions in (IDENTIFY TECHNICAL SPECIFICATION OR LICENSE CONDITION). You informed the NRC on (IDENTIFY DATE/TIME) that the (PLANT) would not be in compliance with (IDENTIFY ACTION REQUIRED BY TS AND DESCRIBE THE NEED FOR THE REQUEST). You provided as justification for continued operation that (SUMMARIZE LICENSEE'S TECHNICAL BASIS FOR OPERATION IN A MANNER THAT WOULD NOT BE IN COMPLIANCE WITH ITS LICENSE). In addition, you identified compensatory measures to include (SUMMARIZE IF ANY WERE PROVIDED OR DELETE SENTENCE).

Based on our review of your justification, including any compensatory measures identified above, we have concluded that this course of action involves minimum or no safety impact, and we are clearly satisfied that this exercise of enforcement discretion is warranted from a public health and safety perspective. Therefore, it is our intention to exercise discretion not to enforce compliance with (IDENTIFY TS OR OTHER LICENSE CONDITION) for the period from (DATE/TIME) to (DATE/TIME). However, we will consider enforcement action, as appropriate, for the conditions that led to the need for this exercise of enforcement discretion.

(SIGNATURE)
REGIONAL ADMINISTRATOR
OR
NRR ASST. DIRECTOR FOR REGION ___ REACTORS

cc: See next page
(attach plant service list)