

U.S. Nuclear Regulatory Commission Cooperative Information Sharing and Enforcement

This report serves as the U.S. Nuclear Regulatory Commission's (NRC's) response to Executive Order 13892, "Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication," (October 9, 2019). Specifically, Section 9(a) of the Executive Order requires, in part, that "each agency, as appropriate, shall to the extent practicable and permitted by law, propose procedures" to do the following:

- (i) to encourage voluntary self-reporting of regulatory violations by regulated parties in exchange for reductions or waivers of civil penalties;
- (ii) to encourage voluntary information sharing by regulated parties; and
- (iii) to provide pre-enforcement rulings to regulated parties.

Section 9(b) of the Executive Order allows any agency that determines additional procedures are not practicable because it already has adequate procedures in place to submit a report describing, as appropriate, its existing procedures or any other basis for its conclusion.

This report describes the relevant policies and procedures in place at the NRC as the NRC is not proposing new procedures.

Background

NRC licenses and regulates our Nation's civilian use of radioactive materials to provide reasonable assurance of adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. As an independent regulator with an important safety and security mission, the NRC focuses on ensuring safety and security while appropriately balancing the interests of the public and the regulated community. In carrying out the NRC's civil administrative enforcement program, the agency encourages transparency, open communications, and cooperative information sharing with the regulated community, the public, and other stakeholders, as fundamental tenets of the NRC's strategic vision to protect public health and safety. These practices afford regulated parties and the public appropriate notice and information that lead to fair enforcement outcomes.

Cooperative Information Sharing and Enforcement

Existing NRC policies, programs, and procedures promote transparency and fairness in administering the NRC's Enforcement Program, consistent with the objectives of Executive Order 13892. Specific examples from the existing policies, programs and procedures include:

- (i) Encourage voluntary self-reporting of regulatory violations by regulated parties.

The NRC's Enforcement Policy¹ sets forth the general principles governing the NRC's Enforcement Program and is approved by the Commission. One of the Enforcement Policy's stated goals is to "[e]ncourage prompt identification and prompt comprehensive correction of violations of NRC requirements." For more serious violations that are subject to potential civil penalties, the Enforcement Policy expressly considers whether

¹ The Policy is publicly available at <https://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

the regulated party identified the noncompliance. If so, and depending on whether the regulated party promptly corrected the violation, the civil penalty is either reduced or waived. Additionally, the Enforcement Policy also permits the staff to disposition certain violations of lesser significance as noncited violations if the regulated party identifies and reports the violation.

(ii) Encourage voluntary information sharing by regulated parties.

NRC policies and programs support and encourage voluntary information sharing in a variety of ways. Industry information-sharing conferences occur on a regular basis, both with and without direct NRC participation. The NRC's public website also promotes transparency by providing best practices and lessons learned. Examples include:

- The NRC's Annual Regulatory Information Conference (RIC) is the largest public meeting the agency hosts, bringing together nearly 3,000 participants from more than 30 countries representing interested stakeholders from the regulated community, other government agencies, industry, international organizations, and the general public. The RIC offers an open environment in which a diverse group of stakeholders may learn, share, and discuss information about nuclear regulatory activities and emergent issues. The RIC offers a technical program featuring experts from across the agency, the country, and the world. Throughout the 3-day conference, panelists address a broad range of topics of interest.
- Excluding those related to security matters, the NRC regularly makes inspection reports available through its public website and its Web-based Agencywide Documents Access and Management System. This includes reports from inspections that are part of the NRC's Reactor Oversight Process, Construction Inspection Program, and inspections of medical, industrial, and academic uses of nuclear materials. As a result, regulated parties are able to view the results of NRC inspections of similarly-situated regulated parties.
- Furthermore, the NRC encourages voluntary information sharing by publishing public documents providing insights into compliance with agency regulations. For example, the NRC staff develops several types of guidance documents, such as regulatory guides, standard review plans, and the NRC Inspection Manual to aid licensees in meeting regulatory requirements. While NRC guidance documents do not contain or impose legally binding standards or requirements, licensees may commit to following NRC staff guidance as conditions of their licenses. The vast majority of guidance documents are initially issued publicly as drafts, and the NRC staff actively solicits comments on these drafts. The NRC also uses generic communications as a method to proactively communicate the agency's position on a variety of regulatory issues. For example, regulatory issue summaries are used to communicate or clarify NRC technical or policy positions. Information notices are used to communicate operating or analytical experience or the results of recently completed research to allow industry review of the information for applicability and consideration of appropriate actions..

(iii) Provide pre-enforcement rulings to regulated parties.

The NRC's enforcement process is specifically designed to provide notice or an opportunity to submit information before the NRC makes an enforcement decision. In fact, the NRC's Enforcement Policy explicitly addresses this concern, stating that "throughout the process, an organization or individual subject to an NRC enforcement action has multiple opportunities to provide input." For all NRC inspections, the staff conducts exit meetings with the regulated entity between 30 and 45 days before the issuance of any written violation. Potential violations of low significance as well as apparent violations of escalated significance are described in detail at these meetings. For more safety-significant violations (e.g., those for which civil penalties could be issued), the NRC will, as a standard practice, give the regulated party or individual the opportunity to provide insights into the apparent violations before the agency takes any action that has any legal consequence. Under current NRC procedures,² the regulated party or individual is typically given the option to provide information on apparent violations in writing or in person at a predecisional enforcement conference with the NRC. If the case involves possible willful behavior or deliberate misconduct, the NRC will also normally include a factual summary of the evidence the agency has gathered when offering the regulated party or individual the opportunity to respond to the apparent violations. The NRC will only issue a final written decision after it has reviewed all of the available information and will clearly articulate the basis for any enforcement action that could have legal consequences.

To avoid unfairly surprising regulated parties with enforcement action, the NRC's Enforcement Policy provides a detailed explanation of how the agency determines severity levels, factors to be considered in mitigation or escalation of penalties, and a table of base monetary civil penalties by specific classes of licensees. The Enforcement Policy also includes several examples of violations to publicly provide insights into how the agency will determine the significance or severity level associated with a specific type of violation. These examples promote transparency, fairness, and consistency in the application of enforcement sanctions imposed under the NRC's regulations.

The NRC's well-established enforcement process provides ample notice and opportunity for dialogue before the agency takes enforcement action. Therefore, the NRC is not proposing new procedures for pre-enforcement rulings.

² NRC Enforcement Manual at <https://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html>.