Enforcement Policy Revision Summary

This document should be used in concert with the redline, strike-out version of the draft NRC Enforcement Policy (the Policy) in the Agencywide Documents Access and Management System (ADAMS) under Accession No. ML20297A235. The draft policy contains "item numbers" at or near the location of the proposed revisions, and this document identifies both the purpose and the affected page number(s) of the revision within the draft policy. The order of items in this list corresponds with the order the items appear in the draft policy.

To enhance the readability and material information flow of the policy, Section 2.0 includes the relocation of significant text. These relocations are identified with green text and the new location is identified via a comment box located on the margin.

Item 349 (page 4) NRC's public Web site update - Revisions to the NRC Web site required a new "path" to retrieve a copy the policy.

Item 320 (pages 12, 96, 97) Expands the discussion of "potential consequence." - In determining the appropriate enforcement response to a violation, the NRC considers four broad factors as described in Section 2.2.1. Most of these factors are well defined, with the exception of "potential safety or security consequences." This revision integrates "substantial potential for overexposure" (from the Glossary) into the definition of substantial potential consequences. Clarifying the gradient associated with potential consequences will enhance the predictability and transparency of the NRC's application of this term on a case-by-case basis. This revision will acknowledge the existence of a gradient, articulate basic characteristics of different levels of potential safety or security consequences, and link those levels to severity levels (SLs).

Item 314 (pages 12, 15, 45, 61, 71, 96) Removal of specific Inspection Manual References - The NRC is removing references to specific Inspection Manual Chapters from the policy; this will alleviate the need for future policy revisions due to numbering or title changes.

Item 313 (pages 13, 94) Traditional enforcement at power reactors (Section 2.2.4) - The NRC is revising this section to state that 'related' violations may result in the issuance of both an ROP finding and a traditional enforcement violation. In addition, a new definition for "inspection finding" has been included in the Glossary along with a revision to the term "significance" to incorporate verbiage from the re-defined definition of potential consequences.

Item 322 (page 15) Application of risk insight in the policy (Section 2.3) - The NRC is stating that the policy inherently applies risk when determining appropriate enforcement actions and sanctions.

Item 333 (pages 16, 22, 23, 36, 50, 51, 53, 70, 87, 94, 96) Glossary terms (Section 7.0) - The NRC is defining the terms 'programmatic' and 'isolated.' A common understanding of these terms along with the already defined term 'repetitive violation' are essential for agency-wide consistency when characterizing and assessing the significance of a violation.

Item 326 (page 19) Civil penalty assessment clarification (Section 2.3.4) - The NRC is clarifying that the civil penalty amount to be assessed is the penalty amount in effect at the time of the final enforcement action pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

Item 336 (pages 19, 31, 63, 64, 65) Lost source policy (Section 2.3.13) - The NRC is providing clarification on how to consider the circumstances surrounding a violation when determining the appropriate severity level and application of civil penalties when a licensee took action to recover missing material in a timely manner. This revision aligns with the current policy's level of deterrence, encourages licensees to take prompt action upon discovering that regulated material is lost or missing, and includes new severity level examples involving lost or missing regulated material.

Item 334 (pages 22, 23, 24, 25) Civil penalty credit for corrective actions (Section 2.3.4) - The NRC is providing clarity to several paragraphs in Section 2.3.4, to maintain consistency and improve efficiency when assessing civil penalty credit for identification and for promptness and comprehensiveness of corrective actions.

Item 347 (page 26) Civil penalty and discrimination cases (Section 2.3.4) - Currently as written, the policy may be interpreted as stating that a civil penalty will be not assessed for any discrimination cases in which the licensee takes appropriate corrective actions. This revision clarifies that a civil penalty will not be proposed for certain discrimination cases (i.e., instances when the licensee takes appropriate early action, the NRC opts not to investigate, and when the licensee's corrective actions are judged to be prompt and comprehensive).

Item 303 (pages 27, 93) Confirmatory action letter enhancement (Section 2.3.7) - The NRC is enhancing the readability of Section 2.3.7 and updating the definition of a confirmatory action letter (CAL). Currently the policy states, "Confirmatory action letter…take certain actions to remove significant concerns…"; however, the NRC defines an SL II as a violation that resulted in or could have resulted in significant safety or security consequences, which does not correlate with the criteria for issuing a CAL.

Item 324 (page 33) Alternative Dispute Resolution (ADR) clarification (Section 2.4.3) - The NRC is revising this section to clarify the nominal expectation for the extent of licensee corrective actions agreed upon in an ADR settlement action, i.e., the NRC seeks a level of corrective actions broader than those likely achieved.

Item 342 (page 37) Notice of Enforcement Discretion (Section 3.8) - The NRC is expanding the scope of this section to allow Non-Power Production and Utilization Facilities which a similar regulatory structure (i.e., technical specifications) to power reactors to be included in this process. The removal of gaseous diffusion plants from this section is also appropriate since there are none in existence nor does the NRC anticipate any in the future. The revision also clarifies when the process may be used during the different stages of the reactor decommissioning process.

Item 299 (page 38) Classified materials and individuals (Section 4.0) - The NRC is clarifying its guidance for issues involving classified materials and individuals who are involved in deliberate misconduct and have a security clearance.

Item 321 (page 41) Allegers who are involved in deliberate misconduct (Section 4.1) - The NRC is revising this section to clarify the criteria for when an enforcement sanction would be issued to an alleger who engages in deliberate misconduct.

Item 348 (page 46) 10 CFR 50.59 violation examples (Section 6.1) - A 10 CFR 50.59 violation is a violation which impacts the ability of the NRC to perform its regulatory oversight function. However, the current violation examples consider the significance of the underlying issue but

appear to fall short of addressing the actual reason for the violation, i.e., "impeding the regulatory oversight function." This proposed revision is drafted to specifically address cases in which it is clear that the NRC would have taken a different regulatory action if the NRC had been provided the opportunity to review the licensee's change.

Item 281 (pages 46, 47) Failure to retain quality records violation examples (Section 6.1) - Currently, Section 6.1 lacks examples for violations involving the failure to retain quality records as required by 10 CFR 50.71 or 10 CFR Part 50, Appendix B, Criterion XVII. The new SL III and SL IV examples for lost records address the following: impact on the regulatory process, impact on the licensee's ability to maintain operability of safety-related SSC's, and consequences as related to the Significance Determination Process.

Item 236 & 330 (pages 47, 48, 49) Fuel cycle violation examples (Section 6.2) - Fuel cycle operation SLs are being revised to remove reference to gaseous diffusion plants since there are none licensed under Part 76 and to clarify the difference between a SL III and SL IV violation for a loss of a criticality accident alarm system. In addition, this revision aligns the emergency preparedness examples with the violation examples in Section 6.6 by keeping with the philosophy that the SL of the violation would be one step lower based on the postulated risk at the fuel cycle facility.

Item 335 (pages 50, 52, 53, 54, 55, 67) Material Operations violation examples (Section 6.3) –

- Failure to have or follow a written procedure:
  The NRC expanded the SL I through SL IV examples regarding failures to follow required procedures for other materials licensees. In developing the revised example violations, the NRC considered the current policy, in Section 2.2.2, regarding what constitutes each SL and ensured that the new examples remain consistent with this section and the other examples in Section 6.3.

- Well logging requirements:
  The NRC added SL III and IV examples that address a licensee's failure to secure a well logging source in order to prevent tampering or removal of the licensed material by unauthorized personnel in accordance with 10 CFR 39.31.

Item 211 (pages 52, 54) Materials Operations violation examples (Section 6.3) - The NRC is both modifying the existing SL III violation examples and adding a new SL IV violation example for failures to meet decommissioning requirements. The modification specifies that the violation example is for significant failures to meet decommissioning requirements and now includes three sub-examples to illustrate what may constitute a significant failure to comply.

Item 315 (page 54) Materials Operations violation examples (Section 6.3) - The NRC is adding a new SL IV violation example for less significant cases in which a licensee fails to maintain control and constant surveillance over a portable gauge during operational conditions as required by 10 CFR 20.1802. This new violation example is suitable for instances where independent physical controls were not in place because the licensee reasonably expected to maintain control and constant surveillance but failed to do so for a short duration of time.

Item 343 (page 55) Materials Operations violation examples (Section 6.3) - The NRC is adding a new SL IV violation example for violations associated with licensed material possession and use of byproduct material which will address less significant cases for a licensee's failure to meet the requirements of 10 CFR 30.34.

Item 319 (page 55) Licensed Reactor Operators violation examples (Section 6.4) -
The NRC is updating these violation examples using a graded, performance-based approach which will allow certain violations to be assigned a significance from SL I to IV. This revision will also incorporate the performance attribute 'error' into the violation examples.

Item 345 (page 66) Transportation violation examples (Section 6.8) - The NRC is revising violation example 6.8.c.3 to include the word "marking" in the text. This will aid in the disposition of certain transportation violations involving a licensee's failure to ensure that appropriate "markings" are placed on shipping containers in accordance with NRC and Department of Transportation (DOT) regulations. Title 10 of CFR 71.5 requires licensees to implement certain DOT regulations associated with the transport of licensed materials on public thoroughfares which includes a requirement for appropriate "marking and labeling."

Item 294 (pages 84, 85) Export and Import Activities violation examples (Section 6.15) - The NRC is adding violation examples, clarifying existing text and revising specific violation examples to address lessons learned.

Item 337 (page 85) Independent Spent Fuel Storage Installations violation examples (Section 6.16) - The NRC is adding a new violation example section which focuses specifically on independent spent fuel storage installations. As more of these facilities are constructed and utilized, NRC inspectors have identified the need for additional violation examples which specifically address technical violations identified during inspections.