



POLICY ISSUE

(Notation Vote)

January 25, 2024

FOR: The Commissioners SECY-24-0009

FROM: Daniel H. Dorman
Executive Director for Operations

SUBJECT: PROPOSED REVISIONS TO THE U.S. NUCLEAR REGULATORY
COMMISSION ENFORCEMENT POLICY

PURPOSE

The purpose of this paper is to seek Commission approval of proposed revisions to the U.S. Nuclear Regulatory Commission's (NRC's) Enforcement Policy (Policy). This paper does not address any resource implications.

BACKGROUND

The Policy contains the basic framework that the NRC uses to consider potential enforcement actions in response to apparent violations of NRC requirements. The primary purpose of the Policy is to support the NRC's overall mission of ensuring adequate protection of public health and safety, promoting the common defense and security, and protecting the environment.

The NRC initially published the Policy in the *Federal Register* (FR) on October 7, 1980 (45 FR 66754). Since its initial publication, the Policy has been revised occasionally to address changing requirements, provide clarifications, and incorporate lessons learned. The Policy was most recently updated on January 13, 2023, to incorporate changes to Section 8.0, "Table of Base Civil Penalties," based on requirements of the Federal Civil Penalties Inflation Adjustment

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Act Improvements Act of 2015. This version is available through the NRC's Agencywide Documents Access and Management System (ADAMS), under Accession No. ML22336A179.

DISCUSSION

The Office of Enforcement (OE) has historically drafted significant revisions to the Policy approximately every 5–6 years. The most recent significant revision was published on November 7, 2016 (81 FR 47689). To discern areas of the Policy that might need revision, the enforcement staff relies on feedback provided through the Enforcement Guidance Document Feedback process. This process facilitates the collection and management of feedback (e.g., suggestions, comments, lessons learned, and clarifications) from internal stakeholders on enforcement documents (i.e., the Enforcement Policy, Enforcement Manual, and temporary enforcement guidance) and provides a mechanism to document how this feedback is dispositioned.

Consistent with the goals of the feedback process, the OE staff and management reviewed and selected 28 of the most impactful feedback topics for this proposed revision to the Policy. To ensure effective collaboration and engagement from internal stakeholders, OE management organized a team of five working groups comprising staff members from across the agency to address the selected staff suggestions. Each working group was led by an OE enforcement specialist and involved the participation of approximately 45 individuals from across all program and regional offices. The goal of each working group was to research its topical area, evaluate the staff suggestion or recommendation for any needed change, and formulate a proposed Policy revision to address the issue if appropriate.

Throughout this effort, the working groups maintained frequent and timely communications with all regions and program offices on the recommended resolutions of the documented feedback. Within a 4-month period, the working groups researched each topical area, developed proposed recommendations, and conducted a review at the staff/office director level to reach alignment on the draft policy revisions.

Consistent with Commission direction, the staff also provided an opportunity for the public to comment on the proposed Policy revisions. Accordingly, a 60-day comment period notice was published in the *Federal Register* on December 3, 2020 (85 FR 78046), soliciting comments from external stakeholders, including public interest groups, States, members of the public, and the regulated industry (i.e., reactor and materials licensees, vendors, and contractors).¹ Three stakeholders (Enercon Talisman, the Nuclear Energy Institute, and Louisiana Energy Services, LLC; ML21047A166, ML21047A169, and ML21049A094, respectively) submitted a total of 21 comments. Enclosure 1 provides these comments and the staff's disposition of them. However, three topics described in enclosure 1, topic 317, "Removal of the Reactor Oversight Process Qualitative Color Descriptions," portions of topic 336, "Lost Source Policy," and 336a, "Recent Lessons Learned" were added and or revised after the public comment period.

¹ Included in this public notice was proposed revisions to the current violation examples for 10 CFR 50.59 violations. Although these examples did not receive public comments, during the concurrence process OE received comments which will require further analysis and deliberation. Therefore, the proposed 10 CFR 50.59 violation examples have been removed from this revision and will be considered in the next Policy revision.

Given the number of topical areas addressed by the proposed Policy revision, as well as input from external stakeholders, the staff has developed a roadmap² explaining the basis for each substantive change proposed. Each proposed revision is identified and tracked by an item number, which corresponds to a specific Enforcement Guidance Document Feedback Database process tracker number. Enclosure 1 summarizes each proposed revision, the corresponding page number in the “track changes” version of the draft Policy document (enclosure 2), the basis for the proposed revision, and any associated external stakeholder comments (including how those comments were dispositioned, if applicable).

The order in which the item numbers appear in enclosure 1 corresponds to the order of appearance in the draft Policy revision. Additionally, enclosure 2 contains bracketed numbers (e.g., item numbers) at or near each proposed revision, with green-colored text to indicate the relocation of existing Policy text.

COMMITMENT

The staff will revise the Policy and other guidance documents, as appropriate, to reflect the changes approved by the Commission.

RECOMMENDATIONS

The staff recommends that the Commission take the following actions:

- (1) Approve the proposed Policy revisions as outlined in this paper and the enclosed *Federal Register* notice (enclosure 4).
- (2) Expand the explicit delegation of authority granted by the Commission to the Executive Director for Operations (as described in enclosure 1, item #336a, the last bulleted item) to implement, as necessary, updates to item f.3 in table A of the Policy in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

² In the staff requirements memorandum “Staff Requirements—SECY-09-0190—Major Revision to NRC Enforcement Policy,” dated August 27, 2010 (ML102390327), the Commission stated that the staff should prepare a roadmap identifying the changes from the last revision of the Policy and explain the basis for each substantive change with the next and subsequent revisions of the Policy.

COORDINATION

The Office of the General Counsel has no legal objection to the draft Policy revision.

Daniel H. Dorman
Executive Director
for Operations

cc: SECY
OGC
OCA
OPA
CFO

Enclosures:

1. Proposed Policy Revision Items
2. Proposed Policy (track changes)
3. "Clean" Version of the Proposed Policy
4. *Federal Register* Notice

SUBJECT: PROPOSED REVISIONS TO THE U.S. NUCLEAR REGULATORY COMMISSION ENFORCEMENT POLICY Dated: January 25, 2024

DISTRIBUTION:

ADAMS Package: ML22318A121
 Memo: ML22318A123
 Enclosure 1: ML22318A130
 Enclosure 2: ML22318A132
 Enclosure 3: ML22318A138
 Enclosure 4: ML23038A220

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