



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

NRC INSPECTION MANUAL

NMSS/FCSS

MANUAL CHAPTER 9900

NOEDGAS.TG

OPERATIONS - NOTICE OF ENFORCEMENT DISCRETION FOR
GASEOUS DIFFUSION PLANTS

A. PURPOSE

This document provides guidance to staff in the Region III Office and the Office of Nuclear Material Safety and Safeguards (NMSS) on how the U.S. Nuclear Regulatory Commission (NRC) may exercise enforcement discretion regarding limiting conditions for operation (LCO) in gaseous diffusion plant (GDP) Technical Safety Requirements (TSRs) or other certificate conditions. This type of discretion is addressed in Section VII.C of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy, NUREG-1600) and is designated as a Notice of Enforcement Discretion (NOED). NOEDs may be warranted for GDPs if compliance with a TSR LCO or with other certificate conditions would unnecessarily call for a total plant shutdown or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required. A NOED can be issued for a GDP provided the specific applicable criteria set forth below are met.

The NOED process is designed to address temporary nonconformances from the TSR/certificate conditions only, and is not appropriate for nonconformances with law, regulations, or orders. Exemptions from regulations should be processed in accordance with the provisions of 10 CFR 76.23. Some rule requirements are duplicated in the TSR. In these situations, a NOED would address only the nonconformances to the TSR. Unlike TSRs, regulations do not specify action statements that require shutdown if certain conditions are not met. Thus it should be noted that when a certificate holder finds itself in noncompliance with a regulation, immediate action such as shutting down the activity is not explicitly required, unless otherwise specified by NRC requirements. However, it is important that the certificate holder perform prompt safety assessments of the noncompliance with regulations and make a determination of what should be the safe operational status of the plant. The certificate holder should further determine what other NRC requirements apply to the situation and take required actions. Generic Letter 91-18, "Information to Licensees Regarding Two NRC Inspection Manual Sections on Resolution of Degraded and Nonconforming Conditions and on Operability," and its associated staff guidance in NRC Inspection Manual Chapter Part 9900, provide staff guidance for addressing certain nonconformances to the regulations.

When a NOED is granted, it is recognized that the TSR/certificate will be violated, but that NRC is exercising its discretion not to enforce compliance with the TSR/certificate for a specified time period. In all cases, appropriate

enforcement actions consistent with the NRC's Enforcement Policy should be considered for the root causes leading to the need for the NOED.

B. CRITERIA

1.0 General Considerations

A certificate holder may depart from its TSR in an emergency, pursuant to the provisions of TSR 1.6.4 "Conditions Outside TSR", without prior NRC approval, when it must act immediately to protect public and worker health and safety. However, situations occur, occasionally, that are not addressed by the provisions of TSR 1.6.4, and for which NRC's exercise of enforcement discretion may be appropriate. Provided that the certificate holder has not failed to apply for an amendment in a timely manner, it is appropriate that NRC have the NOED procedure available to use for expeditious notice, to a certificate holder, of NRC's intention to exercise enforcement discretion under limited circumstances.

The NRC staff is expected to issue NOEDs infrequently. Although requirements may dictate that a GDP must shut down a facility or activity, or delay a startup of a facility or activity, absent the exercise of enforcement discretion, the NRC staff is under no obligation to issue a NOED. The decision to forego enforcement action is discretionary. A NOED is to be issued only if the NRC staff is clearly satisfied that such action is warranted from a worker or public health and safety, an environmental, safeguards, or security standpoint. NOEDs will be granted on a case-by-case basis, considering the individual plant circumstances. If NRC decides not to issue a NOED, the certificate holder must take the action required by the TSR (except as stated in TSR 1.6.4) to avoid being in violation. In addition, if a report is required by 10 CFR 76.120, as a result of the non-conformance, the certificate holder must submit that report, notwithstanding the staff's issuance of a NOED.

Careful regulatory scrutiny must be given to any deviation from the required actions of the TSR/certificate conditions, for circumstances involving violations, poor planning, misinterpretation of a TSR, repeated NOED requests for the same reasons; or some similarly avoidable situation. To prevent the potential for such abuse, and the lack of up-front public notice and participation in the NOED process, the NRC staff will apply criteria similar to those in 10 CFR 50.91, to verify that the emergency condition is unavoidable.

2.0 Situations Affecting Safety, Security, or Safeguards

The following are NOED criteria applicable for various plant conditions:

1. For on-going operations at the GDP, the NOED is intended to: (a) avoid undesirable transients as a result of forcing compliance with the TSR/certificate condition and, thus, minimize potential safety, environmental, safeguards, or security consequences and operational risks; or (b) eliminate testing, inspection, or system realignment that is inappropriate for the particular plant conditions.
2. For attempting to start up a particular operation or facility at the GDP, the need for a NOED is expected to occur less often than for on-going operations, because delaying startup does not usually leave a plant in a condition in which it could experience undesirable transients. Thus, the issuance of NOEDs for plants attempting to start up must meet a higher threshold, as described below. NOEDs for plants attempting to start up are to be exercised only when the certificate holder considers and the

NRC staff has concluded that, notwithstanding the conditions of the TSR/certificate:

- a. The equipment or system does not perform a safety function in the mode in which operation is to occur (e.g., a TSR that requires the equipment to be operable in a mode not required by the Safety Analysis Report); or,
 - b. The safety function performed by the equipment or system is of only marginal safety benefit, and remaining in the current mode increases the likelihood of an unnecessary plant transient; or
 - c. The TSR/certificate conditions require 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.
3. The NOED is intended to avoid a total plant shutdown under any operating condition without considering the full implication of the common good or without a corresponding safety, safeguards, security, or environmental benefit.

The letter issuing a NOED allowing for the continuation of a startup must specifically address which of the above three criteria were satisfied. If the criteria, as described above, are not satisfied, the certificate holder must comply with the TSR/certificate requirements until a TSR/certificate amendment is submitted and issued.

C. NOED PROCESS

1.0 REGIONAL NOED

A region-issued NOED is appropriate when the noncompliance is nonrecurring, will not exceed 14 days in duration, and a certificate amendment is not practical because the plant will return to compliance with the existing certificate in a short period of time. Matters that a region-issued NOED may address include:

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

The authority to issue a NOED is assigned to the Regional Administrator, who may delegate the authority to the Division Director of Nuclear Materials Safety. The NOED should be based on a written request (or in some cases oral request followed by a written request within 24 hours) from a certificate holder. Before issuing a NOED, the region shall obtain the concurrence of the Special Projects Branch Chief, Division of Fuel Cycle Safety and Safeguards (FCSS). The Special Projects Branch Chief, FCSS, in turn, should consult with the Fuel Cycle Operations Branch Chief concerning the acceptability of issuing the NOED for issues involving chemical and criticality safety and material control and accountability. Whenever a regional NOED is exercised, the staff's evaluation of the certificate holder's request, including the applicable items in Section C.3 of this guidance, should be documented in a letter to the certificate holder from the Regional

Administrator or his/her designated official. The letter should follow the format and content of Attachment A to this guidance, and specify and discuss the maximum period of time for which the NOED is in effect (not to exceed 14 days, except in unusual circumstances). The region may grant a NOED verbally, but this should be followed by written authorization within 2 working days of the verbal NOED authorization. Resolution of the condition that led to the request for enforcement discretion should terminate the NOED. All certificate holder - staff teleconferences to discuss NOED requests should be made through the NRC headquarter's Emergency Operations Center recorded telephone line (Telephone No. (301) 415-0550). This provides a record of the discussion and a basis for future verification of its consistency with the certificate holder's follow-up written request.

2.0 NMSS NOED

Matters that an NMSS-issued NOED may address include:

1. A noncompliance with an element specified in an LCO until such time as the element can be revised by a TSR amendment.
2. A noncompliance with an action statement time limit for which a TSR amendment will be processed to make the extension either a temporary or a permanent change to the TSR.
3. A noncompliance with a surveillance interval or change to a surveillance requirement that will be incorporated by an amendment.

The authority to issue a NOED is delegated to the Special Projects Branch Chief, FCSS. The NOED should be based on a written request (or in some cases, an oral request followed, within 24 hours, by a written request) from a certificate holder. Before issuing a NOED, the Special Projects Branch Chief shall obtain concurrence from the Region III Division Director of Nuclear Materials Safety (to ensure that the region considers the need for enforcement action for any root-cause violations that led to the NOED). In addition, the Special Projects Branch Chief, FCSS, should consult with the Fuel Cycle Operations Branch Chief concerning the acceptability of issuing the NOED for issues involving chemical and criticality safety and material control and accountability. The staff may grant a NOED verbally, but this should be followed by written authorization within 2 working days of the verbal NOED authorization. All certificate holder - staff teleconferences to discuss NOED requests should be made through the NRC headquarter's Emergency Operations Center recorded telephone line (Telephone No. (301) 415-0550). This provides a record of the discussion and a basis for future verification of its consistency with the certificate holder's follow-up written request. Whenever an NMSS NOED is exercised, including the applicable items in Section C.3 of this guidance, should be documented in a letter to the certificate holder from the Special Projects Branch Chief. The letter should specify and discuss the maximum period of time for which the NOED is in effect (resolution of the condition that led to the request or issuance of the follow-up TSR/certificate amendment would return the certificate holder to a condition of compliance with the TSR/certificate), and should follow the format and content of Attachment A to this guidance. Follow-up TSR/certificate amendments for NMSS-issued NOEDs should be processed as quickly as possible. The follow-up TSR amendment should be issued within 120 days of the issuance of the NOED unless otherwise justified by any special circumstances. If necessary, a NOED-related issue that is part of a larger TSR/certificate amendment request should be handled as a separate amendment if that will expedite issuance. When amendments

involving NOEDs are issued, the transmittal letter should identify the NOED that the amendment supersedes.

3.0 Request for NOED

NRC should verify that the certificate holder's request for a NOED includes the following:

1. The TSR or other certificate conditions that will be violated.
2. The circumstances surrounding the situation, including root causes, the need for prompt action, and identification of any relevant historical events.
3. The safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed course of action. This evaluation should include at least a qualitative risk assessment.
4. The basis for the certificate holder's conclusion that the noncompliance will not be of potential detriment to the workers nor public health and safety, the environment, safeguards, or security, and that neither an unreviewed safety question nor a significant hazard consideration is involved.
5. The basis for the certificate holder's conclusion that the noncompliance will not involve adverse consequences to the environment.
6. Any proposed compensatory measure(s).
7. The justification for the duration of the noncompliance.
8. A statement that the request has been approved by the facility organization that normally reviews safety issues (Plant Onsite Review Committee, or its equivalent).
9. The request must specifically address how one of the NOED criteria for appropriate plant conditions specified in Section B is satisfied.
10. If a follow-up TSR/certificate amendment is required, the NOED request must include marked-up TSR pages showing the proposed TSR changes. The actual TSR/certificate amendment request must follow within 48 hours.
11. Any other information the staff deems necessary before making a decision to grant a NOED.

The request from the certificate holder should normally be sent by facsimile to the Director of NMSS and the Regional Administrator. The signed original should be sent to the Document Control Desk. However, if circumstances do not permit time for the written request to be prepared and sent to NRC, the certificate holder may make the request orally, describing to the best of its ability the information required by the staff. The certificate holder's oral request needs to be followed promptly by written documentation (usually within 24 hours) addressing the items listed above. In cases where a TSR/certificate amendment is appropriate, the written request for the NOED should be followed within 48 hours by the certificate holder's request for a TSR/certificate amendment for NRC consideration. Such a TSR/certificate amendment request should discuss the bases

for the certificate holder's conclusions that the amendment does not involve an unreviewed safety question nor irreversible environmental consequence.

If the request is made orally (to be followed with a written request), NRC must have sufficient information to reach the same conclusions as if it had received a written submittal. The follow-up written request must confirm the information that the staff relied on in arriving at its conclusion to issue the NOED. If a certificate holder orally requests a NOED, but subsequently determines that no violation of the certificate will occur and the NOED is not needed, the certificate holder and staff must still follow up with appropriate documentation. It sometimes happens that a certificate holder is considering requesting a NOED or has made an oral request and, in the course of discussing the request with the staff, it is determined that a NOED is not the appropriate action. In such cases there are no formal requests, rejections, or documentation. To enable tracking of such occurrences, the cognizant NMSS Project Manager should prepare a brief note describing the situation that gave rise to the consideration of a NOED request, the discussions that took place, the reason it was deemed not appropriate, and dates, and include this information in the NOED database. The Special Projects Branch is responsible for maintaining the database for Enforcement Discretion Requests and NOEDs.

D. STAFF EVALUATION AND DOCUMENTATION

Prior to issuance of the NOED, to the extent practicable, the Region III Fuel Cycle Branch Chief and/or the NMSS Project Manager should verify the certificate holder's oral assertions, including root cause and compensatory measures, and that the NOED request is consistent with the staff's policy and guidance. If any of the verifications cannot be made prior to issuance of the NOED, this should be done subsequently, as soon as time permits. The results of the verification activities are to be documented in a subsequent inspection report. When a NOED is granted either by the region or NMSS, the responsible resident inspector should open an Unresolved Item (URI), to facilitate prompt tracking, documentation and closure of inspection, verification and resolution activities, including enforcement action determinations associated with the NOED.

The staff's letter documenting the NOED must be self-standing, address the appropriate items in Section C.3 of this guidance, and demonstrate that issuance of the NOED is consistent with the policy and guidance. The NOED letter should also clearly specify which of the certificate holder's arguments the staff accepted in reaching its decision and the criterion that is satisfied. The sequence of events in the staff's letter should be clear and include: how and when the certificate holder first requested the enforcement discretion; what the length of the Action Completion Time or surveillance interval involved was; when the allowed time would end; when (if applicable) verbal discretion was issued; the date of the certificate holder's follow-up written request (if the original was made verbally); the specific period of discretion, starting at the end of the time period; and, if the NOED was terminated before the staff's letter was issued, the letter should contain the time the NOED was actually terminated. The staff should document in the NOED letter its verification of the consistency between the certificate holder's verbal and written requests. The letter should also identify by name and title, the key staff who participated in the NOED evaluation and approval and, if applicable, when the certificate holder's follow-up certificate amendment request will be or was submitted.

It is not acceptable for the staff to permit the certificate holder not to follow a TSR/certificate condition while the staff considers a request for discretion. If the certificate holder is unable to provide the staff an adequate basis before

the time period ends, the certificate holder must take the required actions to comply with the TSR while endeavoring to supply the staff an adequate basis for issuing the NOED. It is recognized that in cases involving short LCO times or complex issues, the staff may have to act before all the information is available. In such cases, if the information presented provides a clear basis that worker and public health and safety are assured and that the criteria of the NOED policy are satisfied, enforcement discretion may be exercised. If subsequent information fails to support the initial issuance of the NOED, it should be terminated, as discussed in Section E.

E. EARLY TERMINATION OF ENFORCEMENT DISCRETION

If NRC decides to terminate the NOED for any reason before the time specified in the NOED, the staff should verify that the certificate holder takes steps to achieve the appropriate plant status and implement the existing TSR-required actions upon oral notification of the termination by the Special Projects Branch Chief or Region III Director of Nuclear Material Safety (DNMS). The time required to bring the facility into compliance with the TSR/certificate conditions will be determined by the Special Projects Branch Chief or Region III Director of DNMS.

Upon notification of termination of the NOED, the certificate holder must inform NRC of the proposed course of action to restore the plant to a condition of compliance with the certificate. The termination of the NOED by NRC should be documented in a letter to the certificate holder and should address the actions taken or planned by the certificate holder, including the time necessary for the certificate holder to achieve the required plant conditions, including an orderly shutdown, in the most prudent manner, considering safety.

F. ENFORCEMENT

In all these cases, NRC will not normally take enforcement action for the TSR/certificate condition violations during the period the NOED was in effect, except for the root causes leading to the noncompliance, as discussed below.

The decision to exercise enforcement discretion by issuing a NOED 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 staff has chosen to exercise enforcement discretion, enforcement action will normally be taken for any violations that contributed to the root causes leading to the noncompliance. The enforcement action is intended to emphasize that certificate holders should not rely on the NRC's NOED process as a routine substitute for compliance or for requesting a TSR/certificate amendment.

NMSS-issued NOEDs shall be closely coordinated with the region to ensure that the region considers the need for enforcement action for any root-cause violations that led to the NOED issued by NMSS. For any NOED issued where the root cause of the need to request a NOED was a violation (regardless of the severity level), an EA number is to be obtained from the Office of Enforcement (OE). The staff should follow the guidance in the NRC Enforcement Manual, NUREG\BR-0195, to determine and process the appropriate enforcement action. OE approval is required for not issuing an enforcement action, 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. All staff determinations regarding enforcement actions associated with the issuance of a NOED must be documented in the next

appropriate inspection report under the URI established to track that NOED, regardless of whether or not the determination is to take enforcement action. If the root cause underlying a NOED request results in an escalated action, the time during which the NOED is effective will not be counted in considering the impact of the violation.

G. DISTRIBUTION

Copies of the letter to the certificate holder shall be distributed according to established regional and NMSS procedures. Further, as a minimum, distribution shall include the following:

1. Deputy Executive Director for Regulatory Programs
2. Regional Administrator
3. Director, NMSS
4. Director, FCSS, NMSS
5. Director, OE
6. Public Document Room
7. Electronic copy (WordPerfect file) to NRC Internet Webmaster, E-mail address: NRCWEB
8. Appropriate Branch Chiefs (Region and NMSS)
9. Appropriate PM
10. Appropriate Senior Resident Inspector

Further, the issuing office must ensure that the certificate holder's request is also placed in the Public Document Room and the electronic copies of NOEDs are prepared in accordance with Attachment B. NMSS will post the staff's NOED approval or denial letter on the NRC public web page. The NMSS Special Projects Branch will maintain a file of all NOEDs.

H. TRACKING OF NOTICES OF ENFORCEMENT DISCRETION

The PM should open a Technical Assignment Control (TAC) number under Licensing

Each NOED will be assigned a number to permit tracking. The PM assign a number consisting of four digits. The first two digits indicate the year and the last two digits are the sequential number of the NOED for the issuing office. For example, GDP NOED 98-02 is the 2nd NOED issued in 1998. This number should be included in parenthesis at the end of the subject line for the NOED, for example: (GDP NOED 98-02).

Each office (region or NMSS) is responsible for tracking the NOEDs it issues and for entering the required data into its tracking system. Additionally, the region will be responsible for inspection, follow-up, and enforcement for all NOEDs issued, including those issued by NMSS, for plants in the region.

On a semi-annual basis, the PM will request the region to provide updated database information regarding follow-up actions to previously issued NOEDs. This should include reference documents and dates for verification of certificate holders' oral assertions in the NOED requests, the determination to take or to not take enforcement action for any violations that may have led to the need for the NOED, and any follow-up inspections of certificate holders' root cause determinations, and corrective actions.

I. NOED CHECKLIST

A NOED checklist is provided in Attachment C as an aid to the staff in assuring adherence to this guidance. Its use is discretionary and it is a companion, not a substitute, for the detailed guidance.

END

Attachments:

- A. Sample Letter for NOED Issuance
- B. File Format for Electronic Copy (WordPerfect file) of NOED Approval / Disapproval Letters.
- C. NOED Checklist

Attachment A
SAMPLE LETTER FOR NOED ISSUANCE

Addressee

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR [Certificate holder NAME]
REGARDING [PLANT NAME(S)] [TAC NO. XXXXXX (if applicable), NOED
NO. XXXX]

By letter dated [date of letter], you requested that the NRC exercise discretion not to enforce compliance with the actions required in [TSR or certificate condition citation]. Your letter documented information previously discussed with the NRC in a telephone conference on [date] at [time]. The principal NRC staff members who participated in that telephone conference included [list name and titles of the principal staff participants]. You stated that on [date and time] the plant(s) would not be in compliance with [TS/certificate condition] which would require [statement of the requirement including the Action completion time and the date and time when the action statement was entered]. You requested that a Notice of Enforcement Discretion (NOED) be issued pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.c. of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, and be effective for the period [state certificate holder's requested period for the NOED]. This letter documents our telephone conversation on [date and time] when we orally issued this NOED. [If appropriate: We understand that the condition causing the need for this NOED was corrected by you causing you to exit from the [TS/certificate condition] and from this NOED on [date and time].

[Briefly restate the certificate holder's description of the events leading up to the request for the NOED and a summary of their safety rationale for issuing the NOED. Include any compensatory measures that the certificate holder has proposed.]

[Summarize the staff's evaluation of the certificate holder's request and supporting safety rationale including the items in Section C.3 of this guidance, state which of the certificate holder's justifications the staff accepted to the extent that staff verification of the certificate holder's oral assertions including root causes and compensatory measures, has been made prior to issuance of this letter, such verification should be documented here], and cite the explicit criterion in Section B of this guidance that the certificate holder satisfied.]

On the basis of the staff's evaluation of your request, we have concluded that a NOED is warranted because we are satisfied that this action involves minimal or no safety impact, is consistent with the Enforcement Policy and staff guidance, and has no adverse impact on public health and safety. Therefore, it is our intention to exercise discretion not to enforce compliance with [TS/certificate condition] for the period from [date and time] until [if region-issued: date and time; if NMSS-issued: until issuance of a certificate amendment, and state when the amendment request was or will be submitted; state if the approved NOED effective duration differs from the requested time and why]. [For NMSS-issued NOEDs: If the follow-up certificate amendment will not be requested within 4 weeks: We understand that you will submit a certificate amendment by: specify date, and justify circumstances].

As stated in the Enforcement Policy, action will be taken, to the extent that violations were involved, for the root cause that led to the noncompliance for which this NOED was necessary.

signature

Director, Office of Nuclear Material
Safeguards and Security

or
Regional Administrator or designee

Docket No(s): 70-xxxx

Issue Date: 05/03/99

A-1

9900 NOED-NMSS, Attachment A

Attachment B

FILE FORMAT FOR ELECTRONIC COPY (WORDPERFECT FILE)
OF NOED APPROVAL/DISAPPROVAL LETTER

1. Replace the WordPerfect Letterhead Paper Size with Standard Paper Size and include typed letter heading, and letter issue date, as follows:

UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555-0001
October 5, 1998

or for a Region

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
U.S. Nuclear Regulatory Commission
801 Warrenville Road
Lisle, IL 60532-4351
October 5, 1995

2. Remove the concurrence page and any attached internal distribution list.
3. Include the following above the letter author's name:
/original signed by (identify person who signed letter)/
4. Save the WordPerfect file with the following filename: NEyyser.wpd
where the number of the NOED is yy-ser, for example, NOED 98-001 for the first NOED issued by Region 3 in 1998. (WPD just tells users that it is a WordPerfect 6 document.)
5. E-mail WordPerfect file to NRCWEB.

NOED CHECKLIST

NOTE: This is an aid to the staff in assuring adherence to this guidance. Its use is discretionary and it is a companion, not a substitute, for the detailed guidance.

Oral Request Date: _____
 NOED No. _____
 NRC NOED Letter Date _____

TAC No. _____

I. APPLICABILITY

Item	Check	Guidance
1. Non-compliance related to permanently shutdown plant	Yes	Stop. NOED is not applicable.
	No	
2. Non-compliance with TSR or certificate condition	Yes	
	No	Stop. NOED is not applicable.
3. NOED is for short duration (not exceed 14 days), one-time situations	Yes	Regional responsibility
	No	NMSS responsibility
4. NOED request is caused by certificate holder failing to apply for an amendment in a timely manner, i.e., Poor planning.	Yes	Carefully scrutinize to preclude abuse of NOED process.
	No	
5. AOT has expired prior to staff approval of NOED	Yes	Stop. Certificate holder must comply with TSR.
	No	
6. Do any of the following apply: a. TSR has been violated b. Poor planning c. Repeated NOEDs for same reasons	Yes	NOED approval requires closer scrutiny.
	No	

II. SAFETY CONSIDERATIONS

Item	Check		Guidance
1. NOED is for an operating plant	Yes	<input type="checkbox"/>	Item 1a or 1b, must be satisfied.
	No	<input checked="" type="checkbox"/>	Stop. NOED is not applicable.
a) NOED is for avoiding undesirable plant transient, i.e., shutdown.	Yes	<input type="checkbox"/>	Item 1a or 1b, must be satisfied
	No	<input checked="" type="checkbox"/>	
b) NOED would eliminate testing, inspection or system realignment that is inappropriate for particular plant conditions.	Yes	<input type="checkbox"/>	
	No	<input checked="" type="checkbox"/>	
2. Is the plant in a startup condition?	Yes	<input type="checkbox"/>	Item 2a, 2b or 2c must be satisfied
	No	<input checked="" type="checkbox"/>	
a) the equipment or system does not perform a safety function in the mode in which operation is to occur, or			Item 2a, 2b or 2c must be satisfied
b) equipment or system safety function is of only marginal safety benefit, <u>and</u> remaining in the current mode increases the likelihood of an unnecessary plant transient, or			
c) test, inspection or system realignment is inappropriate for the particular plant conditions because it does not provide a safety benefit, or may be detrimental to safety			

III. PROCESS

Item	Check	Guidance
1. Certificate holder's request		<ol style="list-style-type: none"> 1. May be oral. Arrange certificate holder-staff telephone discussions thru the recorded line (301) 415-0550. 2. Written request within 24 hours. Address items in Section C.3. 3. Submit follow-up certificate amendment within 48 hrs.
2. TAC number assigned		Obtain from Licensing Assistant.
3. Verification		Region Branch Chief/ NMSS PM - Verify certificate holder's oral assertions, to the extent practical.
4. Concurrence		Region-issued: Requires NMSS concurrence. NMSS-issued: Requires regional DNMS and NMSS/FCOB concurrence.
4. Issuing authority		Region: Regional Administrator or designee NMSS: Director
5. NOED number		Obtain from PM
6. NOED granting		May be oral, to be followed by NOED letter within 2 working days.
7. Specify maximum period for which NOED is in effect		Region: Maximum 14 days NMSS: Until the issuance of amendment.
8. NOED letter		<ol style="list-style-type: none"> 1. Follow sample (See Attachment A). 2. If subsequent to oral granting of a NOED, the certificate holder determines that no violation of the certificate will occur and thus the NOED is not needed, the certificate holder and staff should still followup with appropriate documentation. 3. Document consistency between the oral and written requests. 4. Cite and demonstrate how the specific NOED criteria satisfied. 5. Identify by name and title principal staff participants in the NOED approval. 6. Evaluate and document applicable items in Section C.3 7. Specify time period for which NOED will be in effect..
9. Follow-up certificate amendment (NMSS)		<ol style="list-style-type: none"> 1. Issue amendment ASAP 2. Send a copy of the amendment letter to email:NOED
10. Root cause violations		Determination made. NMSS coordinate with the region
11. Inspection Report		Region to document root cause violation determination, NOED approval basis, results of verification activities to close URI.
12. Enforcement action		Coordinate with OE. For all NOEDs, Region to open an URI and document determinations in the next appropriate inspection report.
13. Certificate holder ER		Required even if NOED is issued (if otherwise required).
14. Distribution		See Part 9900. Note: Electronic copy of Word Perfect file to Email addresses: NOED and NRCWEB

IV. Certificate holder REQUEST FOR ENFORCEMENT DISCRETION

Item	Check	Remarks
1. The TSR or other certificate conditions that will be violated.		
2. The circumstances surrounding the situation, including root causes, the need for prompt action and identification of any relevant historical events.		
3. The safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed course of action.		
4. The basis for the certificate holder's conclusion that the noncompliance will not be of potential detriment to the public health and safety and that a significant hazard consideration is involved.		
5. The basis for the certificate holder's conclusion that the noncompliance will not involve adverse consequences to the environment.		
6. Any proposed compensatory measure(s).		
7. The justification for the duration of the noncompliance.		
8. A statement that the request has been approved by the facility organization that normally reviews safety issues (Plant Onsite Review Committee, or its equivalent).		
9. The request must specifically address which of the criteria specified in Section B is satisfied and how.		
10. If a follow-up certificate amendment is required, the request must include marked-up TSR pages showing the proposed TSR changes, and a commitment to submit the actual certificate amendment request within 48 hours.		