POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Carrie M. Safford, Secretary

FROM: Commissioner Marzano

SUBJECT: SECY-24-0009: Proposed Revisions to the U.S. Nuclear Regulatory Commission Enforcement Policy

Approved X **Disapproved** ____ **Abstain** ____ **Not Participating** ____

COMMENTS: **Below** ____ **Attached** X **None** ____

MATTHEW MARZANO
Digitally signed by MATTHEW MARZANO
Date: 2025.09.25 23:02:36 -04'00'

Entered in STAR
Yes X
No ____

Signature
Matthew J. Marzano

Date

Commissioner Marzano's Comments on SECY-24-0009, "Proposed Revisions to The U.S. Nuclear Regulatory Commission Enforcement Policy"

I appreciate the staff's sustained, multi-year, and cross-office effort to refine the agency's Enforcement Policy. The proposed revisions thoughtfully address 28 topics, including eliminating qualitative color descriptions from the significance determination process, adding a section for independent spent fuel storage installations, relocating and clarifying guidance on lost or missing sources, and updating several severity level violation examples. I believe that these changes streamline the Policy, improve clarity, and support uniform implementation across headquarters and the regions, helping to minimize confusion and ambiguity. Accordingly, I approve the proposed revisions to the Enforcement Policy, subject to the attached edits to Enclosures 3 and 4, and consistent with the following comments.

The Commission's policy is to address violations with an underlying performance deficiency through both the traditional enforcement process and the Reactor Oversight Process (ROP). This is not "double counting," but helps ensure that both the regulatory and performance aspects are addressed. Staff proposed adding clarifying language to Section 2.2.4, "Using Traditional Enforcement to Disposition Violations Identified at Power Reactors." However, the staff's proposed use of the term "related violation" within this section is inconsistent with other agency policies and documents and may inadvertently cause confusion. I have proposed edits to replace it with "violations with an underlying performance deficiency," which aligns with Management Directive 8.13, "Reactor Oversight Process" and Inspection Manual Chapter 0612, "Issue Screening."

The staff also recommends that the Commission delegate to the Executive Director for Operations (EDO) the authority to update the base civil penalty for the loss of certain regulated materials (Section 8.0, Table A, item f.3), consistent with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. I support this delegation, especially since the EDO already holds authority for all other items in Table A. However, in my view item f.3 should not be treated separately from items f.1 and f.2. Therefore, to ensure consistency, the EDO should be delegated authority to update the entirety of item f, as needed, such that the deterrent value of three times the cost of disposal is upheld.

Lastly, the staff should seek Commission approval for any further revisions to the Enforcement Policy arising from implementation of the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act) and Executive Order 14300, "Ordering the Reform of the Nuclear Regulatory Commission."

MJM edits

NRC Enforcement Policy

Month X, 202X

U.S. Nuclear Regulatory Commission
Office of Enforcement
Washington, DC 20555-0001

Enclosure 3

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PREFACE

The U.S. Nuclear Regulatory Commission (referred to as the NRC, Commission, or agency) Enforcement Policy (Policy) sets forth the general principles governing the NRC's enforcement program and the Commission's expectations regarding the process to be used by the NRC to assess and disposition violations of NRC requirements. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy as appropriate under the circumstances of a particular case. The Policy also describes how organizations and individuals subject to NRC enforcement actions can provide input to the process. A glossary is provided which defines specific terms or words as they are used in the context of this Policy. The NRC Enforcement Manual contains specific processes and guidance for implementing this Policy. The guidance provided in the Enforcement Manual has been written to be consistent with this Policy. The Enforcement Manual appears on the NRC's public website, http://www.nrc.gov (select **About NRC**, then **Enforcement**, then **Enforcement Guidance**).

A compilation of the statutes and materials pertaining to current nuclear regulatory legislation can be found on the NRC webpage.

The NRC maintains a list of changes to the Policy since it was first published with links to a summary of each change and the *Federal Register* notice for each change, on the NRC Office of Enforcement webpage.

1.0 Introduction

The mission of the U.S. Nuclear Regulatory Commission (NRC) is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear material to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment.

The following are some of the activities that the NRC performs as part of its mission:

a. establishing requirements and guidance addressing the possession and use of source, byproduct, and special nuclear material

b. licensing applicants to use source, byproduct, and special nuclear material and construct and operate licensed facilities in accordance with NRC requirements and specific license conditions

c. promoting the transparency and openness of the NRC's enforcement program for all stakeholders

Oversight of licensed activities ensures that licensees are complying with NRC requirements and license conditions. Enforcement is an important part of the NRC's oversight activities.

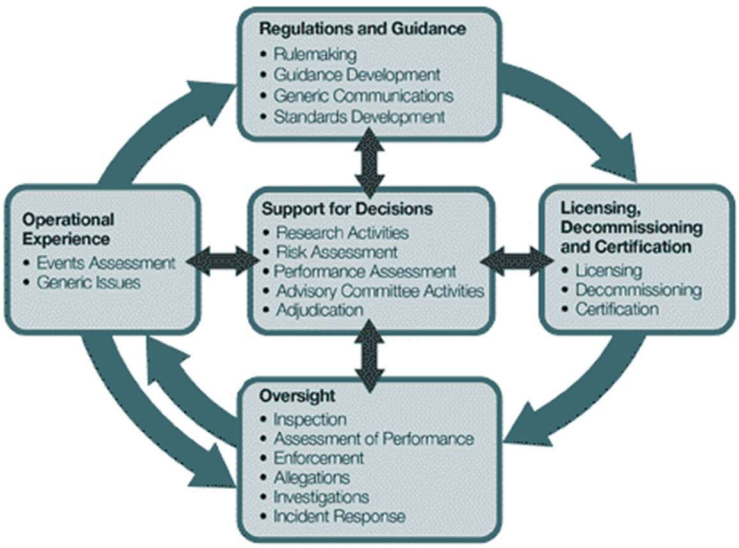

Figure 1 How the NRC regulates

1.1 Purpose

The NRC's Enforcement Policy (the Policy) supports the NRC's mission to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. Adequate protection is presumptively assured by compliance with NRC requirements. Compliance with NRC requirements, including regulations, technical specifications, license conditions, and orders, provides reasonable assurance to the NRC and the public that safety and security are being maintained. The application of this Policy ensures that the NRC's enforcement actions properly reflect the safety or security significance of the associated violations. Consistent with this objective, the Policy endeavors to do the following:

a. Deter noncompliance by emphasizing the importance of compliance with NRC requirements.

b. Encourage prompt identification and prompt, comprehensive correction of violations of NRC requirements.

1.2 Applicability

The Policy applies to all NRC licensees and applicants, to various categories of nonlicensees, and to individual employees of licensed and nonlicensed entities involved in NRC-regulated activities. These include, but are not limited to, the following:

a. organizations and individuals holding NRC licenses

b. license applicants

c. contractors and subcontractors to NRC licensees

d. holders of and applicants for various NRC approvals, including, but not limited to, the following:

    1. NRC certificates of compliance
    2. early site permits
    3. standard design certifications
    4. quality assurance (QA) program approvals
    5. certifications
    6. limited work authorizations (LWAs)
    7. construction authorizations
    8. other permits and forms of NRC approval

e. vendors supplying safety-related components to NRC licensees

f. employees of any of the above

Not all NRC requirements apply to all categories listed above; however, the agency will use the Policy, as appropriate, to address violations of NRC requirements.

It is NRC policy to hold licensees, certificate holders, and applicants responsible for the acts of their employees, contractors, or vendors and their employees, and the NRC may cite the licensee, certificate holder, or applicant for violations committed by its employees, contractors, or vendors and their employees.

The NRC may use the term "licensee" in this Policy to generally refer not only to licensees, but also to certificate holders and applicants.

1.3 Statutory Authority

The NRC derives its principal authority to license and regulate the civilian use of nuclear materials from two statutes: (1) the Atomic Energy Act of 1954, as amended (AEA), which provides broad authority to license and regulate the civilian use of nuclear materials, and (2) the Energy Reorganization Act of 1974, as amended (ERA), which established the agency and its major offices. The Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571-584, provides the statutory framework for the Federal Government to use alternative dispute resolution (ADR).

1.4 Regulatory Framework

The NRC's enforcement program is governed by its regulations. Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Agency Rules of Practice and Procedure," Subpart B, "Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties," describes the formal procedures that the NRC uses to implement its enforcement authority.

1.5 Adequate Protection Standard

The NRC's fundamental regulatory objectives are adequate protection of public health and safety, assurance of the common defense and security, and protection of the environment. Compliance with NRC requirements plays a critical role in giving the NRC confidence that safety and security are being maintained. While adequate protection is presumptively assured by compliance with NRC requirements, circumstances may arise where new information reveals that an unforeseen hazard, security issue, or security event exists, or that a substantially greater potential exists for a known hazard to occur. In such situations, the NRC has the statutory authority to require action by licensees, their employees and contractors, and certificate holders above and beyond existing regulations to maintain the level of protection necessary to avoid undue risk to public health and safety, and to ensure security of materials.

The NRC also has the authority to exercise discretion to permit continued operations—despite the existence of a noncompliance—where the noncompliance is not significant from a risk perspective and does not, in the particular circumstances, pose an undue risk to public health and safety. When noncompliance with NRC requirements occurs, the NRC must evaluate the degree of risk posed by that noncompliance to determine whether immediate action is required. If the NRC determines that the noncompliance itself is of such safety significance that adequate protection is no longer provided, or that the noncompliance was caused by a failure of licensee controls so significant that it calls into question the licensee's ability to ensure adequate protection, the NRC may demand immediate action, up to and including a shutdown or suspension of licensed activities. Based on the NRC's evaluation of noncompliance, the

appropriate action could include refraining from taking any action, taking specific enforcement action including the use of civil penalties, issuing orders, or providing input to other regulatory actions or assessments, such as increased NRC oversight of a licensee's activities. Since some requirements are more important to safety than others, the NRC endeavors to use a risk-informed approach when applying its resources to the oversight of licensed activities, including enforcement activities.

1.6 Responsibilities

The Executive Director for Operations (EDO) and the principal enforcement officers of the NRC, the Deputy Executive Director for Reactor and Preparedness Programs (DEDR) and the Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration and Human Capital (DEDM), have been delegated the authority to approve or issue all escalated enforcement actions. The DEDM is responsible to the EDO for NRC enforcement programs. The Director of the Office of Enforcement (OE), with some limitations, is delegated the authority by the DEDM to approve, sign, and issue all enforcement actions and to oversee and implement the NRC enforcement program.[1]

Subject to the oversight and direction of the Director, OE, and with the approval of the DEDM, where necessary, the regional offices normally issue notices of violation (NOVs) and proposed civil penalties. Subject to the same oversight as the regional offices, the Directors of the Office of Nuclear Reactor Regulation (NRR), the Office of Nuclear Material Safety and Safeguards (NMSS), and the Office of Nuclear Security and Incident Response (NSIR) may also approve, sign, and issue certain enforcement actions as delegated by the Director, OE. The Director, OE, has delegated authority to the Directors of NRR, NMSS, and NSIR to issue orders not related to specific violations of NRC requirements (i.e., non-enforcement-related orders). The Chief Financial Officer has been delegated the authority to issue orders where licensees violate Commission regulations through nonpayment of license and inspection fees. See the NRC Enforcement Manual for a discussion of delegation of enforcement authority.

2.0 **NRC Enforcement Process**

The NRC's enforcement process has the following basic steps:

a. First, a violation is identified.

b. Next, the NRC determines the significance of a violation.

c. Finally, the NRC dispositions the violation.

Throughout the process, an organization or individual subject to an NRC enforcement action has multiple opportunities to provide input.

[1] See NRC Enforcement Manual for additional information regarding the authority delegated to the Director, Office of Enforcement.

2.1 Identification of Violations

The enforcement process begins with the identification of a violation, through either NRC inspections or investigations, a licensee report, or substantiation of an allegation.

All violations are subject to consideration for civil enforcement action; some violations may also be considered for criminal prosecution by the U.S. Department of Justice. After a potential violation is identified, it is assessed in accordance with this Policy. The NRC's enforcement assessment process is fact driven, performance based, and, when appropriate and possible, risk-informed. The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level appropriate to the safety or security significance of the particular violation.

2.2 Assessment of Violations

For most violations committed by power reactor licensees, the significance of the violation is assessed using the Reactor Oversight Process (ROP) or the Construction Reactor Oversight Process (cROP), as discussed below in Section 2.2.3, "Assessment of Violations Identified under the ROP or cROP." All other violations at power reactors or power reactor facilities under construction will be assessed using traditional enforcement as described in Section 2.2.4, "Using Traditional Enforcement to Disposition Violations Identified at Power Reactors." Violations identified at facilities that are not subject to the ROP or cROP are assessed using traditional enforcement.

2.2.1 Factors Affecting Assessment of Violations

In determining the appropriate enforcement response to a violation, the NRC considers the four specific factors discussed below:

a. Whether the violation resulted in actual safety or security consequences. In evaluating actual consequences, the NRC considers issues such as whether the violation resulted in onsite or offsite releases of radiation or radiation exposures exceeding the regulatory limits in 10 CFR Part 20, "Standards for Protection against Radiation," onsite or offsite chemical hazard exposures resulting from licensed or certified activities, accidental criticality, core damage, loss of significant safety barriers, loss of control of radioactive material or radiological emergencies, any violations during an actual general emergency that prevents offsite response organizations from implementing protective actions (under their emergency plans) to protect public health and safety, or whether the security system failed to function as required, and as a result of the failure, a significant event or an event that resulted in an act of radiological sabotage occurred.

b. Whether the violation had potential safety or security consequences. In evaluating potential consequences, the NRC considers whether the violation created a credible accident, security failure, or exposure scenario that could potentially have significant actual consequences. For facilities under construction, the NRC considers the actual or potential impact of the violation on the quality of construction and its resulting effect on the safety and security of the facility.

c. Whether the violation impacted the NRC's ability to perform its regulatory oversight function. The NRC considers the safety and security implications of noncompliances that may affect the NRC's ability to carry out its statutory mission. These types of violations include failures to provide complete and accurate information; failures to receive prior NRC approval for changes in licensed activities, when required; failures to notify the NRC of required changes in licensed activities, when required; failures to perform analyses under 10 CFR 50.59, "Changes, tests and experiments," and similar analyses; failures to maintain an up-to-date and accurate final safety analysis report (FSAR); and failures to comply with reporting requirements. Even inadvertent reporting failures are important because many of the surveillance, quality control, and auditing systems on which both the NRC and its licensees rely to monitor compliance with safety standards are based primarily on complete, accurate, and timely recordkeeping and reporting. The existence of a regulatory process violation does not automatically mean that the underlying issue is significant to safety or security. In determining the significance of a regulatory process violation, the NRC will consider appropriate factors for the particular failure. These factors may include the ~~potential or~~ actual or potential consequences of the underlying issue, whether the failure actually impeded or influenced regulatory action, the level of individuals involved in the failure, the reason the failure occurred given their position and training, and whether the failure invalidates the licensing basis.

Unless otherwise categorized in the violation examples contained in this Policy (i.e., section 6.0), the significance of a violation involving a failure to make a required report to the NRC will depend on the circumstances surrounding the matter that should have been reported. However, the significance of an untimely report, in contrast to no report, may be reduced depending on the circumstances. The NRC will not normally cite a licensee for a failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report. On the other hand, the agency will normally cite a licensee for a failure to report a condition or event if the licensee knew of the information to be reported and did not recognize that it was required to make a report.

d. Whether the violation involved willfulness. Willful violations are of particular concern because the NRC's regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. The Commission cannot tolerate willful violations. Therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. Violations with willful aspects will typically be considered for escalated enforcement. The term "willfulness" as used in this Policy refers to conduct involving either a careless disregard for requirements or a deliberate violation of requirements or falsification of information. In determining whether to escalate the significance of a violation involving willfulness, the NRC will consider such factors as the position, training, experience level, and responsibilities of the person involved in the violation (e.g., licensee official or nonsupervisory employee); the ~~potential or~~ actual or potential consequences of the underlying issue; the intent of the violator (i.e., careless disregard or deliberateness); and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in the significance assessment will depend on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time, in such a way that it willfully

continues, the violation should be considered more than minor. In responding to willful violations, licensees are expected to take significant remedial action commensurate with the circumstances, such that the action reflects the seriousness of the violation, thereby creating a deterrent effect within the licensee's organization.

2.2.2 Traditional Enforcement

Under its traditional enforcement process, the NRC assesses significance by assigning a severity level to all violations by those subject to the NRC's enforcement authority as defined in Section 1.2, "Applicability of the Enforcement Policy." ~~Section 6.0 of this Policy provides examples of severity level (SL) I, II, III, and IV violations, organized by activity area. These examples are not intended to be exhaustive or controlling.~~

Under traditional enforcement, the severity level assigned to a violation generally reflects the NRC's assessment of the violation's significance. Severity level designations reflect different degrees of significance depending on the activity area in which the severity level is designated. A higher severity level may be warranted for violations that have greater risk, safety, or security significance, while a lower severity level may be appropriate for issues that have lower risk, safety, or security significance.

a. SL I violations are those that resulted in or could have resulted in serious safety or security consequences (e.g., violations that created a substantial potential for serious safety or security consequences, or violations that involved systems failing when actually called on to prevent or mitigate a serious safety or security event).

b. SL II violations are those that resulted in or could have resulted in significant safety or security consequences (e.g., violations that created the potential for substantial safety or security consequences, or violations that involved systems not being capable, for an extended period, of preventing or mitigating a serious safety or security event).

c. SL III violations are those that resulted in or could have resulted in moderate safety or security consequences (e.g., violations that created a potential for moderate safety or security consequences or violations that involved systems not being capable, for a relatively short period, of preventing or mitigating a serious safety or security event). Additionally, violations involving licensee officials that impeded or influenced a specific regulatory action, such as a licensing decision or inspection activity, and that would likely have led to a different regulatory decision, or violations that were committed willfully, are typically assigned at least an SL III significance.

d. SL IV violations are those that are less serious, but are of more than minor concern, that resulted in no or relatively inappreciable potential safety or security consequences (e.g., violations that created the potential of more than minor safety or security consequences). Additionally, a significance of SL IV is typically assigned to violations that impeded or influenced a specific regulatory action, such as a licensing decision or inspection activity, but that would likely not have led to a different regulatory decision.

e. Minor violations are those that are less significant than an SL IV violation. Minor violations do not warrant enforcement action and are not normally documented in inspection reports. However, they must be corrected.

Section 6.0 of this Policy provides examples of SL I, II, III, and IV violations, organized by activity area. These examples are not intended to be exhaustive or controlling, and were developed using qualitative risk insights to determine the appropriate severity level for a violation. The duration of a violation is also an appropriate consideration in assessing its significance. Similarly, both the ROP and the cROP use quantitative and qualitative tools based on the significance determination process (SDP), which assigns an inspection color finding.

2.2.3 Assessment of Violations Identified under the Reactor Oversight Process (ROP) or Construction Reactor Oversight Process (cROP)

The assessment, disposition, and issuance of an NRC enforcement action related to an inspection finding at an operating power reactor or power reactor under construction is determined by either the ROP, or the cROP as described in the NRC inspection manual chapters. The ROP and cROP both implement a ~~significance determination process (~~SDP~~)~~ that incorporates risk insights, where possible, to help the NRC staff determine the significance of a noncompliance identified at an operating power reactor or power reactor under construction. An inspection finding processed through the SDP, including any associated violation, is documented in an inspection report and, depending on its significance, is assigned a color (red, yellow, white, or green).

With the exceptions noted below in section 2.2.4, violations associated with ROP or cROP inspection findings are not normally assigned severity levels, nor are they normally subject to civil penalties, although civil penalties are considered for any violation that involves actual consequences.

2.2.4 Using Traditional Enforcement to Disposition Violations Identified at Power Reactors

Certain violations at power reactors cannot be addressed solely through the SDP. Such violations are therefore dispositioned under the traditional enforcement process and assigned severity levels and can be considered for civil penalties in accordance with this Policy.

Violations with the following attributes are dispositioned using traditional enforcement:

a. violations that resulted in actual safety or security consequences (as described in section 2.2.1.a)

b. violations that may impact the NRC's ability to perform its regulatory oversight function (as described in section 2.2.1.c)

c. violations involving willfulness (as described in section 2.2.1.d)

d. violations not associated with ROP or cROP inspection findings

In determining the severity level assigned to such violations, the NRC will consider information

in this Policy and the violation examples in section 6.0 of this Policy, as well as SDP-related information, when available. Violations with an underlying performance deficiency~~Related[2] violations~~ may be dispositioned in parallel within both the traditional enforcement process and the ROP/cROP processes. The SDP will inform but may not necessarily determine the severity level, while the severity level or civil penalty amount should not influence the SDP.

2.2.5 Export and Import of Nuclear Equipment and Material

The NRC's export and import requirements for radioactive material and equipment within the scope of the NRC's export and import licensing authority (10 CFR 110.8, 110.9, and 110.9a) appear in 10 CFR Part 110, "Export and Import of Nuclear Equipment and Material." The NRC will normally take enforcement action for violations of these requirements related to (1) completeness and accuracy of information, (2) reporting and recordkeeping requirements (10 CFR 110.23, 110.26, 110.50, and 110.54), and (3) adherence to general and specific licensing requirements (10 CFR 110.20–110.27 and 10 CFR 110.50).

2.2.6 Construction

In accordance with 10 CFR 50.10, "License required; limited work authorization," no person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit under 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities"; a combined license under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants"; an early site permit authorizing the activities under 10 CFR 50.10(d); or an LWA under 10 CFR 50.10(d). To preclude unnecessary regulatory burden on 10 CFR Part 52 combined license holders while maintaining safety, the NRC developed the Changes during Construction (CdC) Preliminary Amendment Request (PAR) process in the interim staff guidance (ISG) COL-025, "Interim Staff Guidance on Changes during Construction under 10 CFR Part 52," dated September 11, 2015. The license condition providing the option for a PAR as detailed in COL-ISG-025 allows the licensee to request to make physical changes to the plant that are consistent with the scope of the associated license amendment request (LAR). In response to the PAR, the NRC staff may issue a no-objection letter with or without specific limitations. Enforcement actions will not be taken for construction pursuant to a PAR no-objection letter that is outside of the current licensing basis (CLB) while the corresponding LAR is under review as long as the construction is consistent with the associated LAR and the no-objection letter (the latter of which may contain limitations on construction activities). The PAR no-objection letter authorization is strictly conditioned on the licensee's commitment to return the plant to its CLB if the requested LAR is subsequently denied or withdrawn. Failure to promptly restore the CLB may be subject to separate enforcement, such as an order, a civil penalty, or both.

In accordance with 10 CFR 70.23(a)(7) and 10 CFR 40.32(e), commencement of construction before the NRC finishes its environmental review of license or amendment

~~[2] In this context, the term "related" refers to violations that have a cause-and-effect relationship or are directly related to the same event. An example, would be a willful failure to adequately perform a quality-related work order (dispositioned using traditional enforcement) that results in an inoperable structure, system or component (dispositioned using the ROP or cROP).~~

applications for processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, uranium enrichment facility construction and operation, or uranium milling is grounds for denial to possess and use licensed material in the plant or facility. Additionally, in accordance with 10 CFR 70.23(b), failure to obtain Commission approval for the construction of the principal structures, systems, and components of a plutonium processing and fuel fabrication plant before the commencement of such construction may also be grounds for denial of a license to possess and use byproduct, source, or special nuclear material in the plant or facility.

2.3 Disposition of Violations

This section describes the various ways that the NRC can disposition violations. The general tenets of this Policy are used to assess the appropriate enforcement outcome for~~safety or security significance of~~ a violation.

Recognizing that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must also be exercised in determining the appropriate enforcement sanctions. This judgment and discretion includes the decision to issue an NOV, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the significance of the violations, as well as the surrounding circumstances. The NRC also uses risk information to aid in determining the appropriate enforcement outcome. ~~A higher severity level may be warranted for violations that have greater risk, safety, or security significance, while a lower severity level may be appropriate for issues that have lower risk, safety, or security significance. The severity level examples in section 6.0 of this Policy were developed using qualitative risk insights to determine the appropriate severity level for a violation, with SL IV being the least significant and SL I the most significant. Similarly, both the ROP and the cROP use quantitative and qualitative tools based on the SDP, which assigns an inspection color finding. The duration of a violation is also an appropriate consideration in assessing its significance.~~

2.3.1 Minor Violation

Violations of minor safety or security concern generally do not warrant enforcement action or documentation in inspection reports but must be corrected. Examples of minor violations can be found in the NRC Enforcement Manual and the applicable inspection manual chapter(s).

2.3.2 Noncited Violation

If a licensee or nonlicensee has implemented a corrective action program that the NRC has determined to be adequate,[3] the NRC will normally disposition SL IV violations and violations associated with green ROP or cROP findings as noncited violations (NCVs) if all the criteria in paragraph 2.3.2.a are met.

For licensees and nonlicensees that the NRC has not credited as having adequate corrective action programs, the NRC will normally disposition SL IV violations and violations associated

[3] The NRC may credit a formal corrective action program that has been inspected and found to meet regulatory guidance, industry standards, or both.

with green ROP or cROP findings as NCVs if all of the criteria in paragraph 2.3.2.b are met. If the SL IV violation or violation associated with a green ROP or cROP finding was identified by the NRC, the NRC will normally issue an NOV.

Inspection reports or inspection records document NCVs and briefly describe the corrective action the licensee or nonlicensee has taken or plans to take, if known. Licensees and nonlicensees are not required to provide written responses to NCVs; however, they may provide a written response if they disagree with the NRC's description of the NCV or dispute the validity of the NCV.

a. Licensees and nonlicensees with a credited corrective action program[4]

1. The licensee or nonlicensee must place the violation into a corrective action program to restore compliance and address recurrence.

2. The licensee or nonlicensee must restore compliance (or demonstrate objective evidence of plans to restore compliance) within a reasonable period of time (i.e., in a timeframe commensurate with the significance of the violation) after a violation is identified.

3. For traditional enforcement, the violation must either not be repetitive[5] as a result of inadequate corrective action, or, if repetitive, the repetitive violation must not have been identified by the NRC. This criterion does not apply to violations associated with green ROP or cROP findings.

4. The violation must not be willful. Notwithstanding willfulness, an NCV may still be appropriate in the following circumstances:

(a) The licensee or nonlicensee identified the violation and promptly provided the information concerning the violation, if not required to be reported, to appropriate NRC personnel, such as a resident inspector or regional branch chief.

(b) The violation involved the acts of an individual in a low-level position within the licensee's or nonlicensee's organization (and not a licensee or nonlicensee official as defined in Section 7.0, "Glossary").

(c) The violation appears to be the action of the employee without management involvement, and the violation was not caused by lack of management oversight as evidenced by either a history of isolated willful violations or a lack of adequate audits or supervision of employees.

[4] The NRC will credit a formal corrective action program that has been inspected and found to meet regulatory guidance, industry standards, or both.

[5] A violation is considered "repetitive" if it could reasonably have been expected to have been prevented by the licensee's corrective action for a previous violation. Typically, a violation is considered "repetitive" if a previous licensee finding occurred within the past 2 years of the inspection at issue, or the period between the last two inspections, whichever is longer.

(d) The licensee or nonlicensee took significant remedial action commensurate with the circumstances. This action demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's or nonlicensee's organization.

The approval of the Director, OE, is required to disposition willful violations as NCVs.

b. All other licensees and nonlicensees:

1. The licensee or nonlicensee identified the violation.[6]

2. The licensee or nonlicensee corrected or committed to correcting the violation within a reasonable period of time by specific corrective action committed to by the end of the inspection, including immediate corrective action and comprehensive action to prevent recurrence.

3. The violation is not repetitive as a result of inadequate corrective action.

4. The violation is not willful. Notwithstanding willfulness, an NCV may still be appropriate if it meets the criteria in section 2.3.2.a.4 above.

The approval of the Director, OE, is required to disposition willful violations as NCVs.

2.3.3 Notice of Violation

A notice of violation (NOV) (10 CFR 2.201, "Notice of violation") is a written notice setting forth one or more violations of a legally binding requirement and normally requires the recipient to provide a written response describing (1) the reasons for the violation or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken by the licensee or other person and the results achieved, (3) the corrective steps that will be taken, and (4) the date when full compliance will be achieved. The NRC may waive all or portions of a written response to the extent that relevant information has already been provided to the NRC in writing or documented in an NRC inspection report or inspection record. The NRC may require responses to NOVs to be under oath. However, normally, responses under oath are considered necessary only for SL I, II, or III violations; violations assessed using an SDP as white, yellow, or red; or violations of NRC orders. A civil penalty may be issued in conjunction with an NOV.

2.3.4 Civil Penalty

A civil penalty (10 CFR 2.205, "Civil penalties") is a monetary penalty that the NRC may impose for violations of (1) certain specified licensing provisions of the AEA or supplementary NRC

[6] An NOV is warranted when a licensee or nonlicensee identifies a violation as a result of an event where the underlying cause of the event is obvious or the licensee had prior opportunity to identify the problem but failed to take action that would have prevented the event. Disposition as an NCV may be warranted if the licensee or nonlicensee demonstrated initiative in identifying the violation's underlying cause.

rules or orders, (2) any requirement for which a license may be revoked, (3) reporting requirements under section 206 of the ERA, or (4) any NRC rule adopted under section 147 of the AEA with respect to safeguards information (SGI). Based on the circumstances of a specific case, the NRC may increase a civil penalty where application of the guidance in this Policy would normally result in a zero penalty or a base civil penalty, to ensure that the proposed civil penalty reflects the safety significance of the case. The NRC's policy of imposing graduated civil penalties generally takes into account the gravity of the violation as the primary consideration and the ability to pay as a secondary consideration. Thus, higher civil penalties are assessed for operations involving greater nuclear material inventories, significantly higher consequences resulting from a release or exposure to radioactive material, and significantly higher consequences to the public and workers. Regarding the secondary factor of the ability of various classes of licensees to pay civil penalties, the NRC does not intend for the economic impact of a civil penalty to be so severe that it adversely affects a licensee's ability to safely conduct licensed activities or puts a licensee out of business. The NRC uses orders, rather than civil penalties, when the intent is to suspend or terminate licensed activities.

Civil penalties are considered for all SL I, II, and III violations. Typically, a violation assessed under the ROP or cROP is not considered for civil penalties; however, a civil penalty will be considered for violations associated with inspection findings that involve actual consequences. The civil penalty assessment process described in this section and depicted in figure 2 should be followed to determine the appropriateness of a civil penalty for any escalated enforcement action. Notwithstanding the outcome of the normal civil penalty assessment process, the NRC may exercise discretion, as discussed in this section and in Section 3.6, "Use of Discretion in Determining the Amount of a Civil Penalty," by either escalating or mitigating the amount of the civil penalty.

The NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit for each day the violation continues (i.e., daily civil penalties). The NRC may exercise this discretion when a licensee was aware of a violation of at least moderate significance (i.e., at least an SL III) and had a clear opportunity to prevent, identify, and correct the violation but failed to do so.

In evaluating whether daily civil penalties are appropriate, the NRC will consider such factors as whether the violation resulted in actual consequences to public health and safety or to the common defense and security, the safety significance of the violation, whether the violation was repetitive because of inadequate corrective actions, the degree of management culpability in allowing the violation to continue or in not precluding it, the responsiveness of the licensee once the violation and its significance were identified and understood, whether the continuing violation was willful, and the duration of the violation. These evaluation factors are not necessarily of equal significance; therefore, for each case, the NRC will weigh the relative importance of each contributing factor, as well as any extenuating circumstances, to determine whether it is appropriate to use daily civil penalties.

When the NRC determines that the use of daily civil penalties is appropriate as part of an enforcement action, the agency will assess a base civil penalty for the first day of the violation in accordance with the civil penalty assessment process discussed in this section and Section 8.0, "Table of Base Civil Penalties," of the Policy. Then, to

determine the total civil penalty for the continuing violation, the NRC will supplement the base civil penalty determination with a daily civil penalty for some or all of the days the violation continues. The NRC will determine the amount of the daily civil penalty on a case-by-case basis after considering the factors noted in the preceding paragraph and any relevant past precedent for similar violations. The daily civil penalty may be less than the applicable maximum statutory daily limit.

For cases involving the willful failure to either file for reciprocity or obtain an NRC specific license, the NRC will normally consider a civil penalty to deter noncompliance for economic benefit. Therefore, notwithstanding the normal civil penalty assessment process, in cases where there is any indication (e.g., statements by company employees regarding the nonpayment of fees, previous violations of the requirement (including those not issued by the NRC), or previous filings without a significant change in management) that the violation was committed for economic gain, the NRC may exercise discretion and impose a civil penalty. The resulting civil penalty will normally be no more than 3 times the base civil penalty; however, the agency may mitigate or escalate the amount based on the merits of a specific case.

The Commission recognizes that violations occur in a variety of activities and have varying impacts; therefore, the civil penalty tables in section 8.0 of this Policy contain graduated sanctions based on the severity level of the violation. The tables present the base civil penalty (i.e., the normal civil penalty, for a violation of any severity level, for each type of licensee, before the consideration of factors to increase or decrease the amount). The civil penalty amount applied should be the amount in effect at the time the NRC assesses the civil penalty (e.g., the date of the final action proposing the civil penalty), not at the time of the actual violation.

The flowchart in figure 2 is a graphical representation of the civil penalty assessment process and should be used in conjunction with the narrative in this section.

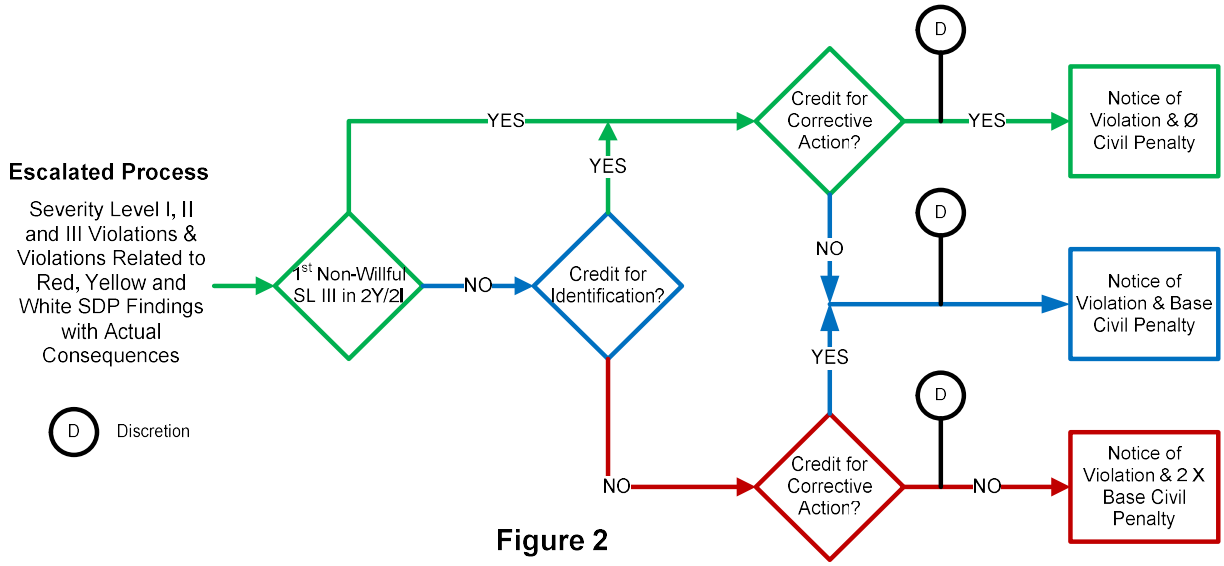

Figure 2

The civil penalty assessment process contains four decision points. Although each decision

point may have several associated considerations for any given case, there are only three possible outcomes of the assessment process for each violation or problem, absent the exercise of discretion: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100 percent. The four decision points are the following:

a. Did the licensee have any previous escalated enforcement action (regardless of the activity area) within the past 2 years of the inspection at issue, or the period between the last 2 inspections, whichever is longer? When the NRC determines that a nonwillful SL III violation or problem has occurred, and the licensee has not had any previous escalated actions (regardless of the activity area) during the past 2 years or 2 inspections, whichever period is longer, the NRC will consider whether the licensee's corrective action for the present violation or problem is reasonably prompt and comprehensive (see the discussion under section 2.3.4.c, below). The 2 year basis for assessment is expected to cover most situations, but a slightly longer or shorter period may be warranted based on the circumstances of a particular case. For a licensee-identified violation or event, the starting point of the 2-year period is when the licensee became aware that a problem or violation existed that required corrective action. For an NRC-identified violation, the starting point is when the NRC put the licensee on notice of the need to take corrective action for the previous violation, which could have been during the inspection, at the inspection exit meeting, or as part of the NRC's postinspection communication with the licensee. The 2-year period typically ends on the date of the second violation.

b. Should the licensee be given credit for actions related to identification of the violation? A stated purpose of this Policy is to encourage prompt identification of violations of NRC requirements. While the decision regarding credit for identification can become complicated, the overarching consideration is whether the NRC should give credit for a licensee's efforts to identify the violation. It is the licensee's responsibility to inform the NRC of its efforts to identify the violation. The NRC will not undertake an inquiry to obtain information on whether identification credit is warranted.

    1. The civil penalty assessment should normally consider the factor of identification, in addition to corrective action (see the discussion in section 2.3.4.c, below). In these circumstances, the NRC should consider whether the licensee should be given credit for actions related to identification when any of the following conditions exist:

        (a) The violation is an SL I or II.

        (b) The violation is a willful SL III.

        (c) The licensee has been issued at least one other escalated action during the past 2 years or between the last two inspections, whichever period is longer.

        In each case, the decision should be focused on identification of the problem requiring corrective action. In other words, although giving credit for identification and corrective action should be separate decisions, the concept of identification

presumes that the identifier recognizes the existence of a problem and understands that corrective action is needed. The decision on identification should be based on all the circumstances of identification, including the following:

(a) whether the problem requiring corrective action was identified by the NRC, identified by the licensee, or revealed through an event

(b) whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of those opportunities

(c) whether the problem was revealed as a result of a licensee self-monitoring effort, such as an audit, a test, surveillance, a design review, or troubleshooting

(d) for a problem revealed through an event, the ease of discovery and the degree of licensee initiative in identifying the underlying cause of the problem and any associated violations

(e) for NRC-identified issues, whether the licensee would likely have identified the issue in the same time period if the NRC had not been involved

(f) for NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier

(g) for cases in which the NRC identified the overall problem requiring corrective action, the degree of licensee initiative or lack of initiative in identifying the underlying deficiency requiring corrective action

2. Although some cases may involve all of the above factors, the importance of each factor will vary based on the type of case, as discussed in the following general guidance:

(a) Licensee identified—The NRC should normally give the licensee identification credit if a problem requiring corrective action is identified by the licensee (or by a contractor for the licensee) before the problem results in an event, regardless of whether prior opportunities existed to identify the problem. If a licensee has identified an issue, identification credit should be considered even if the licensee has not formally characterized the issue as a “violation.” Licensee identification can occur during licensee self-monitoring efforts, such as audits (including self-audits, or third-party audits initiated by the licensee), tests, surveillance, design reviews, or troubleshooting.

(b) Identified through an event—When a problem requiring corrective action is identified through an event (i.e., the problem is self-revealing), the decision as to whether to give the licensee credit for actions related to identification normally should consider (1) the ease of discovery,

(2) whether the event occurred as a result of the licensee's self-monitoring effort (i.e., whether the licensee was "looking for the problem"), (3) the degree of licensee initiative in identifying the problem or problems requiring corrective action, and (4) whether prior opportunities existed to identify the problem.

Any of these considerations may be overriding if particularly noteworthy or egregious. For example, if the event occurred as a result of conducting surveillance or a similar self-monitoring effort (i.e., the licensee was looking for the problem), the licensee should normally be given credit for identification. Even if the problem was easily discovered (e.g., revealed by a large spill of liquid), the NRC may choose to give credit because the licensee exerted noteworthy effort in identifying the underlying cause or extent of conditions, or because no reasonable prior opportunities (e.g., procedural cautions, postmaintenance testing, quality control failures, readily observable parameter trends, repeated or locked-in annunciator warnings, or industry/manufacturer information) existed to identify the problem.

(c) NRC-identified—When a problem requiring corrective action is NRC-identified, the decision as to whether to give the licensee credit for actions related to identification should normally be based on an additional question: can the licensee reasonably be expected to have identified the problem (and taken action) earlier?

In most cases, this reasoning may be based simply on the ease of the NRC inspector's discovery (e.g., conducting a walkdown, observing in the control room, performing a confirmatory NRC radiation survey, hearing a cavitating pump, or finding a valve obviously out of position). In some cases, the licensee's missed opportunities to identify the problem may include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identified the violation but concludes that, under the circumstances, the licensee could not reasonably have identified the problem earlier, the NRC will normally give the licensee identification credit for the purposes of assessing the civil penalty.

(d) Mixed identification—For "mixed" identification situations (i.e., where multiple related[7] violations exist, some identified by the NRC and some by the licensee, or where the NRC prompted the licensee to take action that resulted in the identification of the violation), the NRC's evaluation should normally determine whether the licensee could reasonably have been expected to identify the violation in the NRC's absence. This determination should consider, among other things, the timing of the NRC's discovery, the information available to the licensee that caused the

[7] In this context, the term "related" refers to violations that have a cause-and-effect relationship or are directly related to the same event.

NRC's concern, the specificity of the NRC's concern, the scope of the licensee's efforts, the level of licensee resources given to the investigation, and whether the licensee had dismissed the NRC's analysis or was pursuing it in parallel.

In some cases, the licensee may have addressed the specific symptoms of each violation (and may have identified the violations), but failed to recognize the common underlying cause and to take the necessary comprehensive action. In this case, the decision of whether identification credit is warranted should focus on the extent of the licensee's attempt to identify the underlying cause of the violation.

(e) Missed opportunities to identify—Missed opportunities to identify or prevent violations include the following: (1) through normal surveillances, audits, or QA activities, (2) through prior notice (i.e., specific NRC or industry notification), or (3) through other reasonable indication of a potential problem or violation, such as observations of employees and contractors, and failure to take effective corrective steps. A missed opportunity may include findings of the NRC, the licensee, or the industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to act to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, the NRC will consider, among other things, the opportunities available to discover the violation, the ease of discovery, the similarity between the violation and the notification, the period of time between when the violation occurred and when the notification was issued, the action taken (or planned) by the licensee in response to the notification, and the level of management review that the notification received (or should have received).

The evaluation of missed opportunities normally depends on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. A missed opportunity to identify is normally not applied where the licensee appropriately considered the information available to it and took, or planned to take, reasonable action within a reasonable time, even if another failure occurred before the corrective actions could be fully implemented.

In some situations, the missed opportunity is a violation in itself (e.g., a failure to conduct an annual program review that could reasonably have been expected to identify the violation). In these cases, unless the missed opportunity is an SL III violation in itself, the missed opportunity violation may be grouped with the other violations into a single SL III "problem." However, if the missed opportunity is the only violation, then it should not normally be counted twice (i.e., counting it as both a violation and a missed opportunity constitutes "double counting"), unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity should also be considered. While a rigid timeframe is unnecessary, for consistency in implementation, 2 years should generally be considered as the period reflecting relatively current performance.

3. When the NRC determines that the licensee should receive credit for actions related to identification, the civil penalty assessment should normally result in either no civil penalty or a base civil penalty, depending on whether the corrective action is judged to have been reasonably prompt and comprehensive. When the licensee is not given credit for actions related to identification, the civil penalty assessment should normally result in an NOV with either a base civil penalty or a base civil penalty escalated by 100 percent, depending on the quality of corrective action.

c. Were the licensee's corrective actions prompt and comprehensive?

The purpose of the corrective action factor is to encourage licensees to (1) take the immediate actions necessary, upon discovery of a violation, to restore safety, security, and compliance with the license, regulations, or other requirements, and (2) promptly develop and implement lasting actions that not only will prevent recurrence of the violation at issue, but also will be appropriately comprehensive, given the significance and complexity of the violation, to prevent the occurrence of violations with similar underlying causes.

Regardless of other circumstances (e.g., past enforcement history, identification), the licensee's corrective actions should always be evaluated as part of the civil penalty assessment process. As a reflection of the importance given to this factor, an NRC judgment that the licensee's corrective action has not been prompt and comprehensive will always result in the issuance of at least a base civil penalty.

In assessing this factor, the NRC will consider the timeliness of the licensee's corrective action (including the promptness in developing the schedule for long-term corrective action), the adequacy of the licensee's corrective action, including an adequate underlying ~~root~~ cause analysis for the violation, and, given the significance and complexity of the issue, the comprehensiveness of the corrective action (i.e., whether the action is focused narrowly on the specific violation or broadly on the general area of concern).

In considering whether the licensee's corrective actions are prompt, regardless of who identified the problem (i.e., the licensee, a third party, or NRC), the timeliness of corrective actions should normally be measured from the date when the licensee first became aware of the problem. Corrective action would not typically be considered prompt if the licensee does not take actions to restore safety and compliance in a manner commensurate with safety once the licensee becomes aware of the problem.

To be considered comprehensive, both the short- and long-term corrective actions must be adequate. Whether the corrective actions are judged to be adequate will hinge on whether the NRC had to act to focus the licensee's evaluative and corrective process to

obtain comprehensive corrective action. This will normally be determined at the time of the predecisional enforcement conference (e.g., by outlining substantive additional areas where corrective action is needed). Earlier informal discussions between the licensee and NRC inspectors or management may result in improved corrective action but should not normally be a basis to deny credit for corrective action. However, in cases where the licensee has made little effort to proactively identify and implement corrective actions, the NRC will typically not grant corrective action credit.

For licensees having more than one facility or location, in evaluating the comprehensiveness of the corrective actions, the NRC will also consider whether the licensee applied the corrective actions to all its similarly licensed operations that could be susceptible to the same failure. If, at the time of the enforcement conference, the NRC identifies additional peripheral or minor corrective action still to be taken, the licensee may be given credit in this area, as long as the licensee's actions addressed the underlying cause and are considered sufficient to prevent recurrence of the violation and similar violations.

If the corrective action is judged to be prompt and comprehensive, an NOV normally should be issued with no associated civil penalty. If the corrective action is judged to be less than prompt and comprehensive, the NOV normally should be issued with a base civil penalty.

Corrective action for violations involving discrimination should normally be considered comprehensive only if the licensee takes prompt, action that (1) appropriately addresses the broader environment for raising safety concerns in the workplace and (2) provides a remedy for the particular instance of discrimination at issue.

In response to violations of 10 CFR 50.59, corrective action should normally be considered prompt and comprehensive only if the licensee makes a prompt decision on operability and does either of the following:

(1) makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as-found condition

(2) promptly initiates corrective action consistent with Criterion XVI of Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR Part 50, if the licensee intends to restore the facility or procedure to the FSAR description

d. In view of the circumstances of the violation, should the NRC exercise enforcement discretion to either escalate or mitigate the amount of the civil penalty?

As discussed in Section 3.6, "Use of Discretion in Determining the Amount of a Civil Penalty," discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors, to ensure that the proposed civil penalty reflects all relevant circumstances of the particular case. However, in no instance will a civil penalty for any one violation exceed the statutory daily limit.

2.3.5 Orders

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see 10 CFR 2.202, "Orders"). Orders may be issued in lieu of, or in addition to, civil penalties, as appropriate, for SL I, II, and III violations. Unless a separate response is warranted, pursuant to 10 CFR 2.201, the NRC does not need to issue an NOV in addition to the order when the NOV is based on violations described in the order. Orders may be made immediately effective, without prior opportunity for a hearing, whenever the NRC determines that public health and safety, the public interest, or the common defense and security so require, or that the violation or conduct causing the violation is willful. In such cases, the order may provide, for stated reasons, that the proposed action be immediately effective pending further action. Otherwise, the agency grants a prior opportunity for a hearing on the order.

The NRC may also issue orders to nonlicensees, including contractors, subcontractors, and holders of or applicants for NRC approvals (e.g., certificates of compliance, early site permits, or standard design certifications); to employees of any of the foregoing; and to licensed individuals, such as licensed operators, and nonlicensed individuals.

The Enforcement Manual discusses orders in more detail.

2.3.6 Demand for Information

The Commission may also issue a demand for information (see 10 CFR 2.204, "Demand for information") to determine whether an order under 10 CFR 2.202 should be issued or whether other action should be taken.

2.3.7 Administrative Actions

The NRC supplements the enforcement program when appropriate by using administrative actions, such as confirmatory action letters, notices of deviation, and notices of nonconformance. These administrative actions are defined in the glossary of this Policy and further explained in the Enforcement Manual. The NRC expects licensees and other persons subject to the Commission's jurisdiction to adhere to any commitments resulting from administrative actions and will consider issuing additional orders, as needed, to ensure compliance.

2.3.8 Reopening Closed Enforcement Actions

Under special circumstances (e.g., when the NRC receives significant new information indicating that an enforcement sanction was incorrectly applied), the agency may consider, on a case-by-case basis, reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record.

Special circumstances include, but are not limited to, situations where (1) persons provided incomplete or inaccurate information that would have been considered material to the NRC's disposition of a case, (2) information was deliberately withheld or obscured, or (3) the licensee

made errors in calculations that the NRC would not normally have reviewed. Special circumstances do not normally include the discovery of additional information that was reasonably available to the NRC at the time the agency made its initial enforcement decision unless the Commission determines that action is necessary to ensure adequate protection of public health and safety and is in accord with the common defense and security.

2.3.9 Enforcement Guidance Memoranda

Enforcement guidance memoranda (EGM) are used to provide the NRC staff with temporary enforcement guidance, including, in some instances, enforcement discretion, when the criteria specified in the EGM are met. An EGM normally describes the situation that has necessitated the use of such guidance, as well as the length of time the EGM will be in effect. For a list of current EGM, see appendix A of the Enforcement Manual.

2.3.10 Commission Notification and Consultation on Enforcement Actions

Certain enforcement actions require either advance written notification to the Commission or advance consultation with and approval by the Commission depending on the nature of the proposed sanction. Specific enforcement actions requiring prior Commission notification and consultation include, but are not limited to, the following:

a. Enforcement actions requiring written notification to the Commission:

    1. all enforcement actions involving civil penalties or orders

    2. all notices of enforcement discretion (NOEDs) involving natural events, such as severe weather conditions

    3. the first time that discretion is exercised for a plant that meets the criteria of Section 3.1, “Violations Identified during Extended Shutdowns or Work Stoppages”

    4. where appropriate, based on the uniqueness or significance of the issue, when discretion is exercised for violations that meet the criteria of Section 3.5, “Violations Involving Special Circumstances”

b. Enforcement actions requiring advance consultation with the Commission:

    1. an action affecting a licensee’s operation that requires balancing the public health and safety or common defense and security implications of not operating against the potential radiological or other hazards associated with continued operation

    2. proposals to impose a civil penalty for a single violation or problem that is greater than 3 times the SL I value shown in table A of section 8.0 for that class of licensee

    3. any proposed enforcement action that involves an SL I violation

4. any action that the EDO believes warrants Commission involvement

5. any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (outside of OI) reaches different conclusions from those in the OI report concerning issues of intent, if the Director, OI, concludes that Commission consultation is warranted

6. any proposed enforcement action on which the Commission asks to be consulted

7. any proposals to use discretion to impose a daily civil penalty

2.3.11 Inaccurate and Incomplete Information

A violation of the regulations involving the submittal of incomplete or inaccurate information can result in the full range of enforcement sanctions. The labeling of communication failure as material false statements will be made on a case-by-case basis and will be reserved for egregious violations. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a licensee or applicant normally will be categorized based on the guidance herein, in Section 2.2, “Assessment of Violations,” and in Section 6.9, “Inaccurate and Incomplete Information or Failure to Make a Required Report.”

The Commission recognizes that oral communications may sometimes be inherently less reliable than written submittals, because they do not allow for reflection and management review. However, the Commission must be able to rely on oral communications from licensee and applicant officials concerning significant information. Therefore, in determining whether to take enforcement action for an oral statement, the Commission may consider factors such as (1) the degree of knowledge that the communicator should have had about the matter, in view of their position, training, and experience, (2) the opportunity and time available before the communication to ensure the accuracy and completeness of the information, (3) the degree of intent or negligence, if any, involved, (4) the formality of the communication, (5) the reasonableness of NRC reliance on the information, (6) the importance of the inaccurate or omitted information, and (7) the reasonableness of the explanation for not providing complete and accurate information.

In the absence of at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee or applicant official (e.g., information to support an NOED). However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee or applicant official or others on behalf of a licensee or applicant, if a record was made of the oral information and provided to the licensee or applicant, giving it an opportunity to correct the information. An example of such a situation would be a case in which the licensee or applicant had available a transcript of the communication or a meeting summary containing the error and did not subsequently correct the error in a timely manner.

When a licensee or applicant has corrected inaccurate or incomplete information, the decision of whether to issue an enforcement action for the initial inaccurate or incomplete information will

normally depend on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the error was identified by the NRC or by the licensee or applicant, and whether the NRC relied on the information before the correction was made. Generally, if the licensee or applicant promptly identifies and corrects the error before the NRC relies on or raises a question about the information, then no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the error is identified after the NRC relies on the information or raises some question about its accuracy, then some enforcement action normally will be taken even if the information is corrected. However, if the initial submittal was accurate when made but later turned out to be erroneous because of newly discovered information or an advance in technology, a citation is not normally appropriate, provided that when the new information became available or the advance in technology was made, the initial submittal was corrected. A failure to correct inaccurate or incomplete information that the licensee or applicant has not identified as significant normally will not constitute a separate violation. However, the circumstances of the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee or applicant later determines that the initial submittal was erroneous and does not correct it, or if it had clear opportunities to identify the error. If a licensee or applicant recognizes that information not corrected is significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the failure to correct or provide information raises questions about the licensee's or applicant's commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. Enforcement determinations are made on a case-by-case basis, taking into consideration the issues described in this section.

2.3.12 Reporting of Defects and Noncompliance

Licensees and entities that supply products or services for use in nuclear activities are subject to certain requirements designed to ensure that products or services that could affect safety meet regulatory standards. Through procurement contracts with licensees or their contractors, suppliers may be required to have QA programs that meet applicable QA requirements (e.g., those of Appendix B to 10 CFR Part 50, or 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," Subpart H, "Quality Assurance"). Contractors supplying basic components or services to licensees or their contractors are subject to the requirements of 10 CFR Part 21, "Reporting of Defects and Noncompliance," for reporting defects and failures to comply associated with a substantial safety hazard. Contractors constructing or modifying facilities for construction permit holders under 10 CFR Part 50 or for licensees under 10 CFR Part 52, up to the 10 CFR 52.103(g) finding, are subject to the additional requirements of 10 CFR 50.55(e) for reporting of defects and failures to comply associated with a substantial safety hazard, and of any significant breakdown in the QA program that could cause a defect in basic components when contractually imposed.

When inspectors determine that violations of NRC requirements (e.g., 10 CFR Part 50, Appendix B) have occurred that could adversely affect the quality of a safety-significant product or service, the NRC will typically take enforcement action. NOVs and civil penalties will be used, as appropriate, for licensee failures to ensure that their contractors have programs that meet applicable requirements. The NRC may also issue NOVs to contractors and vendors who

violate 10 CFR Part 21 and may issue NOVs for other violations, such as those resulting from deliberate misconduct. Civil penalties may be imposed against individual directors or responsible officers of a contractor organization who deliberately fail to provide the notice required by 10 CFR 21.21(d)(1). The NRC may issue NOVs or orders to nonlicensees who are subject to the specific requirements of 10 CFR Part 71 and 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste." Notices of nonconformance will be used for contractors who fail to meet commitments related to NRC activities but are not in violation of specific requirements.

2.3.13 Failure to Control and Loss of NRC-Regulated Material

Failure to control NRC-regulated material and loss of NRC-regulated material are significant regulatory and security concerns because they can lead to unauthorized possession or use of the material and to uncontrolled exposure of members of the public to radiation. Therefore, as described below, for violations associated with lost or missing regulated material that is not recovered in a timely manner and where escalated enforcement action is warranted, the NRC may consider increased civil penalties based on 3 times the estimated or actual cost of disposal of the material. The civil penalty amounts should convey the agency's emphasis on the importance of maintaining control over licensed material and responding promptly to retrieve uncontrolled material.

Consultation with OE is required for all cases involving lost or missing regulated material (i.e., regulated material that is lost, abandoned, improperly transferred, or improperly disposed of). The NRC will assess the safety and security significance of all underlying violations by reviewing the violation examples in section 6.7, and may consider the actual or potential consequences of the licensee's loss of control of the material, including any effect on occupationally exposed individuals, members of the public, or the environment, to determine whether escalated enforcement is warranted.

In cases where the licensee did not promptly recover the regulated material and the NRC is considering escalated enforcement, corrective action credit under the civil penalty assessment process is not usually warranted, and the NRC will normally apply a civil penalty. The civil penalty amount for cases involving unrecovered or untimely recovered material will normally be the higher of either (1) the amount listed in section 8.0, table A, paragraph f (which is not adjusted by the multipliers in table B), or (2) the amount listed in section 8.0, table A, paragraphs a-e (adjusted by the applicable multiplier in table B).

In cases where the licensee recovered the regulated material in a timely manner with little or no risk to the public, and for which escalated enforcement is being considered, the normal civil penalty assessment process, including corrective action credit, will be used. The NRC will typically apply any resulting civil penalty using the amounts listed in section 8.0, table A, paragraphs a-e (adjusted by the applicable multiplier in table B).

Notwithstanding the normal civil penalty assessment process, if the regulated material was recovered in a timely manner, but someone other than the licensee identified or discovered that it was uncontrolled or missing, the staff will normally consider using enforcement discretion in accordance with section 3.6 and assess a base civil penalty. This use of

discretion is intended to convey the agency's emphasis on the importance of maintaining control over, and awareness of the whereabouts of, licensed material. However, if a licensee subsequently takes prompt action to recover the material, the civil penalty amount may be mitigated to reflect any decrease in risk resulting from the licensee's timely corrective actions.

In all cases involving the failure to control or loss of NRC-regulated material, the agency may escalate or mitigate the civil penalty amount based on the merits of a specific case. When appropriate, it may also consider the actual consequences and actual costs of disposal to determine an appropriate civil penalty amount.

2.4 Participation in the Enforcement Process

In cases where the NRC is considering escalated enforcement action (i.e., for an SL III or higher NOV or a greater-than-green ROP or cROP finding), before making a final enforcement decision, the staff will typically offer the organization or individual subject to the enforcement action a conference with the NRC to present facts relevant to the assessment and disposition of the apparent violations. The NRC may also request a conference if it needs more information to make a determination related to the assessment and disposition of the apparent violations (e.g., whether violations occurred, the severity level of the violations, any willfulness in the violations, and whether credit should be given for corrective actions or self-identification). The conference is normally held at an NRC regional office and is normally open to public observation except when it involves discussions of classified information or SGI, an enforcement action against an individual, proprietary information, or other sensitive, nonpublic information. In addition, licensees, nonlicensees, and individuals can be offered ADR (see Section 2.4.3, "Alternative Dispute Resolution").

2.4.1 Predecisional Enforcement Conference

A predecisional enforcement conference (PEC) is a conference held with a licensee for violations assessed using traditional enforcement. The term "licensee," as used in section 2.4.1, is applied broadly and includes NRC licensees, applicants, licensed and nonlicensed individuals, contractors, vendors, and other persons. The purpose of the PEC is to obtain information from the licensee to help the NRC determine whether an enforcement action is necessary and, if so, what action is appropriate. The PEC focuses on areas such as (1) a common understanding of the facts, underlying causes, and missed opportunities associated with the apparent violation and (2) a common understanding of the corrective actions taken or planned. If held, a PEC is normally the final step in the NRC's fact-finding process before the staff makes an enforcement decision.

Upon determining that there is a violation for which escalated enforcement action appears warranted, before making an enforcement decision, the NRC normally offers the licensee the opportunity to attend a PEC or provide a written response about the apparent violation, or both. If the NRC concludes that it has sufficient information to make an informed enforcement decision involving a licensee, the NRC will notify the licensee that a PEC does not appear to be necessary, and unless the licensee specifically requests a PEC, one will not be held. The NRC may specifically request a PEC if it needs additional information before making a final enforcement decision. If the NRC does not request a PEC or if the licensee does not accept the

NRC's offer of a PEC, the licensee may choose to respond in writing to a documented apparent violation (describing its underlying causes and any planned or implemented corrective actions) before the NRC takes enforcement action. To the extent practicable, the NRC will consider the licensee's response before taking enforcement action.

The Enforcement Manual discusses PECs in more detail.

2.4.2 Regulatory Conference

A regulatory conference is conducted, in lieu of a PEC, for power reactor inspection findings assessed using an SDP. For reactor inspection findings that are preliminarily assessed as greater than green, the licensee will normally be given an opportunity to meet with the NRC to exchange information related to that assessment. Because the significance assessment typically requires a determination as to whether violations occurred, a subsequent PEC is not normally required.

2.4.3 Alternative Dispute Resolution

The Administrative Dispute Resolution Act of 1996 authorizes and encourages Federal agencies to use ADR procedures. ADR refers to a variety of processes that emphasize creative, cooperative approaches, in lieu of adversarial procedures, for handling conflicts. The form of ADR typically used by the NRC is mediation. In the NRC's enforcement program, ADR is available for cases involving discrimination and other wrongdoing, as well as escalated nonwillful (traditional) enforcement cases, with the potential for civil penalties (not including violations associated with findings assessed through the ROP or cROP).

ADR may also be used for discrimination violations based solely on a finding by the U.S. Department of Labor (DOL); however, the NRC will not negotiate the DOL finding. Individuals within the Commission's jurisdiction may also be offered ADR. ADR complements, and works in conjunction with, the traditional NRC enforcement process. ADR may be offered (1) before a PEC, (2) after the initial enforcement action (i.e., an NOV or the proposed imposition of a civil penalty) is completed, or (3) with the imposition of a civil penalty and before a hearing request. Use of the ADR program is voluntary for all parties, including the NRC; any participant may end the process at any time. Mediation activities are kept confidential in accordance with 5 U.S.C. § 574; however, the terms of the settlement agreement are normally formalized in a confirmatory order, which is published in the *Federal Register*. The confirmatory order typically reflects more comprehensive corrective actions than those that would have been achieved through the traditional enforcement process. Normally, there is also a press release about the settlement agreement.

In some circumstances, ADR may not be appropriate (e.g., for cases in which the U.S. Department of Justice has substantial involvement, cases in which the subject matter is such that a confirmatory order detailing the terms of a settlement agreement cannot be made public, or particularly egregious cases in which ADR would not serve the public interest). The approval of the Director, OE, is required in all cases where the staff proposes not to offer ADR.

The NRC Enforcement Manual and the NRC website provide more information on the NRC's ADR program.

Individuals and their employers (or former employers) can use ADR to resolve discrimination complaints (under section 211 of the ERA) before OI begins investigative activities (i.e., preinvestigation ADR, commonly referred to as "early ADR") (see NRC Management Directive 8.8, "Management of Allegations," dated January 29, 2016). They can also use any licensee-sponsored ADR program that is similar to the NRC's early ADR program. If the parties reach a settlement agreement using early ADR or licensee-sponsored ADR, the NRC subsequently reviews the agreement to make sure that it does not include any provisions in violation of the NRC's employee protection regulations. If no such restrictive provisions exist, the NRC will not investigate the discrimination complaint or take enforcement action.

3.0 **Use of Enforcement Discretion**

The NRC may choose to exercise discretion to either escalate or mitigate enforcement sanctions, or otherwise refrain from taking enforcement action, within the Commission's statutory authority. The exercise of discretion allows the NRC to determine what actions should be taken in a particular case, notwithstanding the guidance in this Policy. After considering the general tenets of this Policy and the safety and security significance of a violation and its circumstances, the staff may exercise judgment and discretion in determining the severity level of the violation and the appropriate enforcement sanctions.

3.1 Violations Identified during Extended Shutdowns or Work Stoppages

Notwithstanding the outcome of the normal NOV and civil penalty assessment processes, the NRC may reduce or refrain from issuing an NOV or a proposed civil penalty for an SL II, III, or IV violation that is identified after one of the following:

a. The NRC has taken significant enforcement action based on a major safety event contributing to an extended shutdown of an operating nuclear reactor or a material licensee (or a work stoppage at a construction site).

b. The licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or inspection records for some materials cases) and meets all of the following criteria:

    1. The violation was either identified by the licensee as a result of a comprehensive program for violation identification and correction developed in response to the shutdown or work stoppage, or identified as a result of an employee or contractor concern conveyed to the licensee through its internal processes.

    2. The violation was based on activities of the licensee before the events leading to the shutdown.

    3. The violation would not be categorized as SL I.

    4. The violation was not willful.

5. The licensee's decision to restart the plant from the shutdown or work stoppage requires NRC coordination or action.

c. Notwithstanding the discretion criterion described above in 3.1.b.4, enforcement discretion for violations involving willfulness may still be appropriate under the specific circumstances of a case. However, the Director, OE, must approve the exercise of such discretion when a willful violation is involved.

3.2 Violations Involving Old Design Issues

For operating facilities, the NRC may exercise discretion to refrain from proposing a civil penalty for an SL II or III violation involving a past problem, such as a problem in engineering, design, or installation, if the violation is documented in an inspection report (or inspection records for some material cases) that describes the corrective action and it meets all of the following criteria:

a. It was identified by the licensee as a result of a voluntary initiative.

b. It was or will be corrected, through both immediate corrective action and long-term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures having similar underlying causes).

c. It was unlikely to be identified (after it occurred) by efforts such as normal surveillance or routinely scheduled QA activities.

The NRC may refrain from issuing an NOV for an SL II, III, or IV violation that meets the above criteria, provided that the violation was caused by conduct that is not reasonably linked to the licensee's present performance (normally, violations that are at least 3 years old or violations occurring during plant construction), and provided that there had not been prior notice, so that the licensee could not reasonably have identified the violation earlier. This exercise of discretion is intended to encourage licensees to initiate efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called on to work.

3.3 Violations Identified Because of Previous Enforcement Action

The NRC may refrain from issuing an NOV or a proposed civil penalty for an SL II, III, or IV violation that is identified after the NRC has taken enforcement action, if the violation is identified by the licensee as part of the corrective action for the previous enforcement action and the underlying cause of the violation is the same as or similar to that of the violation for which previous enforcement action was taken. Additionally, the new violation must not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation, and it must be corrected, through both immediate corrective action and long-term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

3.4 Violations Involving Certain Discrimination Issues

For violations of the NRC's employee protection regulations (e.g., 10 CFR 30.7, 10 CFR 50.7, and 10 CFR 52.5, all titled "Employee protection"), the NRC may exercise discretion to mitigate enforcement sanctions and refrain from issuing a civil penalty or an NOV, or both, when a licensee, without the need for Government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and, if required, the overall work environment for raising safety concerns.

Similarly, the NRC may exercise discretion when a licensee settles a complaint filed with the DOL under section 211 of the ERA before the DOL makes an initial finding of discrimination and, as necessary, addresses the overall work environment. Alternatively, if the DOL makes a finding of discrimination, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the employee's satisfaction, and that, if the DOL area office found discrimination, the licensee has acted positively to reemphasize that discrimination will not be tolerated.

After the initiation of an OI investigation and subsequent substantiation of the discrimination complaint, the NRC may also exercise discretion (i.e., mitigate enforcement sanctions) in discrimination cases in which a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. The NRC would normally not exercise such discretion in cases in which the licensee does not appropriately address the overall work environment or in cases that involve the following: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor, allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements indicate a pattern of discrimination problems, or allegations of discrimination that appear particularly blatant or egregious.

3.5 Violations Involving Special Circumstances

Notwithstanding the outcome of the normal enforcement process, the NRC may reduce or refrain from issuing a civil penalty or an NOV for an SL II, III, or IV violation based on the merits of the case, after considering the guidance in this statement of policy and such factors as the age of the violation, the significance of the violation, the clarity of the requirement and associated guidance, the appropriateness of the requirement, the overall sustained performance of the licensee, and other relevant circumstances, including any that may have changed since the violation occurred. This discretion is expected to be exercised only where application of the normal guidance in the Policy is unwarranted. In addition, the NRC may refrain from issuing enforcement action for violations resulting from matters not within a licensee's control, such as equipment failures that were not avoidable through reasonable licensee QA measures or management controls (e.g., a reactor coolant system leakage that was not within the licensee's ability to detect during operation, but was identified at the first available opportunity or outage). Generally, however, licensees are held responsible for the acts of their employees and contractors. Accordingly, this Policy should not be construed to excuse personnel or contractor errors.

3.6 Use of Discretion in Determining the Amount of a Civil Penalty

Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section 2.3.4, "Civil Penalty," the NRC may exercise discretion[8] by either (1) proposing a civil penalty where application of the civil penalty assessment factors would otherwise result in zero penalty, (2) escalating the amount of the resulting civil penalty to appropriately reflect the significance of the issue, or (3) mitigating the amount based on the merits of the case and the licensee's ability to pay. In accordance with Section 2.3.10, "Commission Notification and Consultation on Enforcement Actions," of this Policy, the Commission must be notified of all enforcement actions involving civil penalties and must be consulted for any proposed civil penalty for a single violation or problem that is greater than 3 times the value in tables A and B in section 8.0 for the severity level of the violation being considered.

Civil penalty discretion should be considered for, but is not limited to, the following:

a. violations or problems originally categorized as SL I or II

b. overexposure or the release of licensed material in excess of NRC limits

c. particularly poor licensee performance

d. situations when the licensee's previous enforcement history is particularly poor, or when the current violation directly repeats an earlier violation

e. willfulness, particularly instances where the licensee consciously decided to violate NRC requirements in order to obtain an economic benefit

f. violations that resulted in a substantial increase in risk, including violations whose duration contributed to the substantial increase in risk

g. violations involving a master materials licensee (MML)—Discretion not to issue a civil penalty may be used in cases where the MML's oversight program resolved the issue appropriately. In recognition of the scope, level of responsibility, and independence entrusted to MMLs, the NRC may use discretion to increase a civil penalty by multiples of the normal base civil penalty. This increase would normally be applied in cases where a programmatic failure occurred in the MML's oversight program

h. loss of control of regulated material (see section 2.3.13)

i. cases involving an individual or a licensee where a concern exists that the outcome from the proposed civil penalty may be overly punitive rather than deterrent

[8] In the context of Section 3.6, "discretion" refers to either escalation or mitigation of an enforcement action or sanction. This differs from the typical use of the term "discretion" to indicate the NRC's choice to mitigate or not take enforcement action for an issue.

3.7 Exercise of Discretion to Issue Orders

The NRC may exercise discretion, where necessary or desirable, by issuing orders with or in lieu of civil penalties to achieve or formalize corrective actions and to deter recurrence of serious violations.

3.8 Notices of Enforcement Discretion for Operating Power Reactors and Non-Power Production or Utilization Facilities[9]

The NRC may choose not to enforce the applicable technical specification limiting condition for operation (LCO), or other license conditions, in circumstances where compliance would involve an activity that might not be prudent given the specific operational conditions, or that might cause an unnecessary impact without a corresponding health and safety benefit.

The NRC will issue an NOED only if the staff is clearly satisfied that the action is consistent with protecting public health and safety or security. The NRC may also exercise enforcement discretion in cases involving severe weather or other natural phenomena, balancing the public health and safety or common defense or security implications of not operating against the potential radiological or other hazards associated with continued operation, if it determines that exercising this discretion will not unacceptably affect safety. In these situations, the staff will inform the Commission immediately after issuing an NOED.

Issuance of an 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 NRC has chosen to issue an NOED, enforcement action will normally be taken for the underlying causes, to the extent that violations were involved, that led to the noncompliance for which enforcement discretion was used.

The NRC Enforcement Manual, Appendix F provides more information on NOEDs.

3.9 Violations Involving Certain Construction Issues

a. Fuel Cycle Facilities

The NRC may choose to exercise discretion for fuel cycle facilities under construction (construction is defined in 10 CFR 40.4, “Definitions,” for source material licensees and in 10 CFR 70.4, “Definitions,” for special nuclear material licensees) based on the general enforcement discretion guidance in section 3 of this Policy.

b. Construction Permit and LWA Holders under 10 CFR Part 50

The NRC may exercise discretion for construction permit and LWA holders during

[9] NOEDs can be used for power reactors during the initial phase of decommissioning up to when the fuel is permanently removed from the spent fuel pool and transferred to dry cask storage. NOEDs will not be used at reactors during construction before the Commission’s 10 CFR 52.103(g) or 10 CFR 50.57 finding, as applicable. However, the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions or otherwise refrain from taking enforcement action within the Commission’s statutory authority, as identified in section 3.0 of this Policy.

construction using the general enforcement discretion guidance in section 3 of the Policy.

c. COL Holders (Reactor Facilities)

The NRC may exercise discretion for COL holders during construction using the general enforcement discretion guidance in section 3 of the Policy, as applicable. Additionally, the NRC may reduce or refrain from issuing an NOV/NCV for a violation associated with an unplanned change that deviates from the licensing basis that is implemented during construction[10] and that would otherwise require prior NRC approval (in the form of a license amendment) when all of the following criteria are met:

- The licensee has identified the unplanned changes implemented, which the staff would normally disposition as an SL IV violation of NRC requirements.[11]

- The licensee submits the necessary information without delay to the NRC so that the staff can promptly evaluate the change as part of the license amendment review process, or submits information to the NRC stating that it will restore the current licensing basis (CLB).

- Either (1) the cause of the deviation was not within the licensee's control, so that the change was not avoidable through reasonable licensee QA measures or management controls, or (2) the licensee placed the cause of the unplanned change in its corrective action program to ensure comprehensive corrective action to preclude recurrence.

For similar issues not identified by the licensee, the NRC may refrain from issuing an NOV/NCV on a case-by-case basis depending upon the circumstances of the issue, such as whether the licensee clearly understood or should have understood the requirements at the time, the cause of the issue, and why the licensee did not identify the issue.

When the NRC determines that an unplanned change during construction associated with a violation of requirements meets the criteria outlined above and the licensee has submitted the necessary information without delay for NRC evaluation, the licensee's continued failure to meet the CLB will not be treated as a willful or continuing violation only while the licensee prepares the license amendment request and the NRC reviews the submittal. (If the NRC subsequently denies a requested license amendment change, or if the NRC requires additional measures to be taken for the change to be considered acceptable, then it may issue a separate NOV or order to ensure that appropriate corrective action is taken, including the restoration of the configuration to the CLB).

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10 The NRC may issue an enforcement action, including consideration of willfulness, for the cause of these unplanned changes, such as a failure to implement appropriate work controls or quality control measures, or a failure to adhere to procedures, processes, instructions, or standards for implementing NRC requirements. This enforcement may be appropriate for the actions that led to the changes during construction.

11 NRC-identified violations that result in a "use as built" determination or in an unplanned change (or both) will normally be dispositioned as a cited, noncited, or minor violation, whether or not the unplanned change issue is resolved by a subsequently approved license amendment.

3.10 Reactor Violations with No Performance Deficiencies

The NRC may exercise discretion for violations of NRC requirements by reactor licensees for which there are no associated performance deficiencies (e.g., a violation of a technical specification that does not cause a performance deficiency).

4.0 **Enforcement Actions Involving Individuals**

Any individual may be subject to NRC enforcement action (1) if the individual deliberately causes or would have caused, if not detected, a licensee to be in violation of any regulation or order, or of any term, condition, or limitation of any license issued by the Commission related to NRC-licensed activities, or (2) if the individual deliberately submits materially inaccurate or incomplete information to the NRC, a licensee, an applicant, or a contractor or subcontractor of a licensee or applicant (e.g., see 10 CFR 30.10, 10 CFR 50.5, 10 CFR 52.4, and 10 CFR 76.10, all titled “Deliberate misconduct”).

The agency will normally take enforcement actions against nonlicensed individuals only in cases involving deliberate misconduct by the nonlicensed individual; in cases involving a lack of reasonable assurance, as discussed below in Section 4.2, “Notices of Violation and Orders to Individuals,” and in cases in which an individual violates any requirement directly imposed on him or her (e.g., a violation of any rule adopted under Section 147, “Safeguards Information,” of the AEA). However, the NRC may take enforcement action against NRC-licensed operators even if the violation does not involve deliberate misconduct, since NRC-licensed operators are subject to all applicable Commission requirements (see 10 CFR 55.53(d)).

The NRC considers enforcement actions against individuals to be significant actions that will be closely evaluated and judiciously applied. Typically, the NRC will take an enforcement action involving an individual, either licensed or nonlicensed, only when the violation has actual or potential safety or security significance. NOVs and orders are examples of enforcement actions that may be issued to individuals. Enforcement actions issued to individuals will normally be placed on the NRC OE website. Generally, before taking enforcement action against an individual, the NRC will seek information to determine whether to issue an order or other enforcement action. The agency may gather such information by conducting a PEC, by requesting a written response from the individual, or by issuing a demand for information. If the violation was deliberate, the individual may also be given the opportunity to address the apparent violation during ADR. The exact nature of this opportunity will depend on the circumstances of the case, including the significance of the issue, the enforcement sanction that the NRC is contemplating, and whether the individual has already had an opportunity to respond to the apparent violation.

On a case-by-case basis, the NRC will consider notifying appropriate authorities if it discovers (through inspections or investigation-related material) potentially damaging or disqualifying information about an individual’s trustworthiness and reliability. For this purpose, an appropriate authority is an entity/agency/licensee that has granted, or is in the process of authorizing, a national security clearance, unescorted access (UA), or Unescorted Access Authorization (UAA). Individuals subject to this notification are those that currently possess, or have applied for, a national security clearance (issued by the NRC or by another authority), UA, or UAA. The

NRC's notification may occur in the preliminary or final determination stage of the enforcement process, as appropriate, with approval of the Director, OE. In deciding whether to notify appropriate authorities, the NRC will strongly consider the degree of certainty associated with the information discovered. If the NRC makes such a notification, the authority nevertheless remains responsible for evaluating the information, in accordance with its national security clearance or access authorization program, to determine what actions to take regarding the individual's national security clearance or access authorization. An authority may reasonably conclude that the information provided by the NRC is not disqualifying under the circumstances (e.g., based on additional facts, based on a different assessment of the facts, or based on the final resolution of the enforcement process).

Since it is NRC policy to hold licensees responsible for the acts of their employees and contractors, in most cases the NRC will cite licensees for violations committed by their employees and contractors. Violations whose significance would typically warrant escalated enforcement action against the licensee (e.g., deliberately providing inaccurate or incomplete information or deliberately falsifying documents) may warrant an enforcement action against an individual. Typically, the NRC will not take enforcement action against the employee or contractor if failures of licensee management (e.g., improper training or inadequate procedures) are responsible for the individual's improper actions. The NRC will decide on a case-by-case basis whether to issue enforcement actions both to a licensee and to a nonlicensed individual.

4.1 Considerations in Determining Enforcement Actions Involving Individuals

The NRC recognizes that decisions about enforcement actions against individuals need to be made on a case-by-case basis. The NRC may propose an enforcement action or refrain from taking an enforcement action after considering the relevant circumstances of each case.

The primary factors considered by the NRC in deciding whether to take action or what action to take are (1) the significance of the underlying violation or technical issue (not considered in discrimination cases) and (2) the individual's position within the organization (i.e., notwithstanding the individual's job title, the NRC will consider their position within the licensee's organizational structure and their responsibilities related to the oversight of licensed activities and to the use of licensed material).

Other factors include, but are not limited to, whether the violation resulted from deliberate misconduct (typically a prerequisite for taking action against a nonlicensed individual), the benefit to the wrongdoer (e.g., direct personal or corporate gain), the degree of management responsibility or culpability, and the attitude of the wrongdoer (e.g., admission of wrongdoing, acceptance of responsibility).

For fitness-for-duty (FFD) violations involving nonlicensed individuals who violate drug and alcohol provisions of site FFD programs, which are explicitly described in 10 CFR 26.75, "Sanctions," the NRC will not typically consider FFD drug and alcohol related violations for enforcement action unless there is an apparent deficiency in the licensee's FFD program to take required sanctions against the individual or deficiencies in implementation of the licensee FFD program.

Individuals who are employed by licensees, contractors, and subcontractors are encouraged to

report violations through the allegation program. Although a rare occurrence, it is possible that the NRC could determine, as the result of an investigation based on an allegation by a person subject to NRC jurisdiction (e.g., an employee of a licensee, contractor, or subcontractor), that the alleger has engaged in deliberate misconduct. Apparent violations involving allegers who are found to have engaged in deliberate misconduct will be addressed through the normal enforcement process. However, an alleger would typically be issued an appropriate enforcement sanction (e.g., an NOV or order) only if (1) the alleger is a licensee official (as defined in section 7.0), (2) escalated enforcement due to the alleger's actions appears to be warranted for the licensee, and (3) the alleger continues to be employed within the NRC's jurisdiction (by either the original or a different licensee) or could be employed within the NRC's jurisdiction in the future. ~~Clear, significant e~~Escalation and mitigation factors may be considered in determining an appropriate sanction and will be documented in the final enforcement decision. An example of an escalation factor is the alleger directing others to engage in deliberate misconduct. An example of a mitigation factor is the alleger being a lower level licensee official whom a senior licensee official directed to engage in deliberate misconduct. If one or more significant mitigation factors exist, the NRC may reduce the alleger's enforcement sanction or use discretion to not issue any enforcement sanction (e.g., if an enforcement action is taken against a more senior licensee official who directed the inappropriate action).

4.2 Notices of Violation and Orders to Individuals

Although the NRC has the authority to issue NOVs to any individual who holds an NRC license and violates NRC requirements, regardless of whether willfulness (either deliberate misconduct or careless disregard) was involved, actions against licensed individuals for nonwillful violations are rare. In the case of a licensed operator's failure to meet applicable FFD requirements (i.e., those of 10 CFR 55.53(j)), the NRC may issue either an NOV to the individual, or an order to suspend, modify, or revoke the individual's licensed operator's license under 10 CFR Part 55, "Operators' Licenses." The agency may also issue to licensed individuals orders containing provisions that would modify or revoke the individual's license or prohibit involvement in NRC-licensed activities for a specified period of time (normally no more than 5 years) or until certain conditions are satisfied (e.g., completing specified training or meeting certain qualifications).

The Commission may also take enforcement action (e.g., issue an order or NOV) against nonlicensed individuals, including contractors and subcontractors and their employees, who knowingly provide defective: components, equipment, or other goods or services, related to a licensee's activities subject to NRC regulations. However, the NRC will not normally issue an enforcement action against a nonlicensed individual unless the individual's actions were a result of deliberate misconduct. When needed to ensure adequate protection of public health and safety and the common defense and security or the public interest, the NRC may issue an order to an unlicensed person, whether a firm or an individual, requiring (1) the removal of the person from all NRC-licensed activities for a specified period of time (normally, no more than 5 years) and (2) prior notice to the NRC before the person engages in NRC-licensed activities.

For either a licensed or a nonlicensed individual, the period of prohibition from NRC-licensed activities is normally based on the significance of the underlying violation and the individual's level of responsibility within the organization. For a highly significant violation by an individual with a high degree of responsibility, the NRC will initially consider a 5-year prohibition period.

Depending on the circumstances of the case, the NRC may either mitigate or escalate the prohibition period (in significant cases, this may include a permanent ban from NRC-licensed activities).

In addition to the above, the NRC may take enforcement action against a licensee that may affect an individual, where the individual's conduct calls into question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, enforcement actions may be taken for matters that raise issues of integrity (e.g., lying to the NRC), competence, fitness for duty, or other issues that may not necessarily violate specific Commission requirements.

4.3 Civil Penalties to Individuals

Except for individuals subject to civil penalties under section 206 of the ERA, as amended, the NRC will not normally impose a civil penalty against an individual. However, section 234 of the AEA gives the Commission authority to impose civil penalties on "any person." Furthermore, any person, whether or not a licensee of the Commission, who violates any regulations adopted under AEA section 147, will be subject to the full range of enforcement sanctions, including civil penalties. Section 11s of the AEA broadly defines "person" to include individuals, a variety of organizations, and their representatives or agents.

The NRC may issue a civil penalty to any individual who deliberately releases SGI, including SGI-modified handling, regardless of whether that individual is employed by a licensee. If an individual deliberately releases or fails to properly control SGI after the end of their employment with a licensee, the NRC will typically consider individual enforcement actions, including civil penalties in accordance with this Policy, as described below.

The NRC will typically not issue a civil penalty to an individual for nondeliberate violations of SGI requirements if that individual's employer (a licensee, certificate holder, applicant for a license or a certificate of compliance, or contractor) places the violation in its corrective action program and has taken, or plans to take, corrective actions to restore compliance. Based on the circumstances of the case, the NRC will consider whether a civil penalty is appropriate for a nondeliberate release of SGI by an individual for which the employer failed to take or plan to take corrective actions, and for a deliberate or nondeliberate release of SGI by an individual after the end of their employment with a licensee.

In deciding whether to issue a civil penalty and in determining the final civil penalty amount, the NRC will consider the individual's reasons and potential motivations for disclosing SGI and their willingness to correct or mitigate the release of information. The NRC typically reserves civil penalties for egregious violations and for individuals who refuse to correct or mitigate the release of information. Table A in section 8.0 of this Policy lists the base civil penalty for individuals who release SGI. Civil penalties to individuals are intended to serve as a deterrent; the base civil penalty for individuals does not need to be as high as that for a licensee or contractor. However, willful violations may justify a civil penalty outside of the range given in section 8.0.

Section 6.13, “Information Security,” of this Policy provides a risk-informed approach for assessing the significance of information security violations. In determining the appropriate severity level for a release of SGI, the NRC will consider the type of SGI disclosed, its availability to the public, the damage or vulnerability that the disclosure caused or may cause to the licensee owning the SGI, and the damage that the disclosure caused or could cause to public health and safety. The NRC will also use SGI-related information from the SDP (under the ROP), when available, to inform the severity level determination.

4.4 Confirmatory Orders to Individuals

Agreements with individuals reached through ADR are normally formalized by the issuance of a confirmatory order. The ADR process typically offered to individuals is consistent with the process used for licensees (see section 2.4.3 of this Policy).

5.0 **Public Availability of Information about Enforcement Actions**

In accordance with 10 CFR 2.390, “Public inspections, exemptions, requests for withholding,” enforcement actions and licensees’ responses are normally made publicly available for inspection. However, some security-related information and medical records, except if obtained pursuant to the Commission’s regulations, will not be made available to the public. The NRC Office of Public Affairs is responsible for deciding whether press releases will be issued; however, the NRC normally issues press releases for orders and civil penalties at the same time that it issues the order or proposed imposition of the civil penalty. Press releases may also be issued when a civil penalty is withdrawn or substantially mitigated. Press releases are not normally issued for NOVs that are not accompanied by orders or proposed civil penalties, unless the issue or licensee involved is of some particular interest.

6.0 **Violation Examples**

The violation examples in this Policy are intentionally broad in scope so as to serve as guiding examples that are neither exhaustive nor controlling for making severity level determinations. Licensed activities, including activities not directly covered by any of the listed areas, are placed in the most appropriate activity area in light of the particular violation involved. The violation examples are not intended to address every possible circumstance. However, when an enforcement case scenario very nearly meets all or some of the criteria in an example, the case should be considered to be at the severity level of that example. For example, in relation to the violation examples in Section 6.7, “Health Physics,” if a case very nearly reached one or more of the severity levels in an example, and it was only fortuitous that the limit was not actually met or exceeded, then the severity level for the relevant example applies. If the circumstances of a case do not squarely fit any particular violation example, the staff may consider a comparable example in the same activity area to determine the severity level. For example, if a case involving an industrial licensee presents circumstances and considerations comparable to those for a medical example in Section 6.3, “Materials Operations,” then the severity level for the medical example can be applied.

Many examples are written to reflect the risks associated with the use of nuclear

materials. However, violations during construction generally occur before the nuclear material and its associated risks are present. Therefore, recognizing that violations that occur during construction have lower risk significance in the areas of emergency preparedness, operator licensing, and security, the NRC may reduce the severity level for such violations from that indicated by the examples in those areas. To maintain consistency, the staff must coordinate with OE before applying this principle for violations that occur during construction.

6.1 Reactor Operations

a. SL I violations involve, for example, the following:

1. A system[12] that is part of the primary success path, and that functions or actuates to mitigate a design basis accident (DBA) or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier is unable to perform its licensing basis safety function[13] when actually called on to function.

2. An inadvertent or unplanned criticality occurs.

3. A technical specification safety limit is exceeded.

b. SL II violations involve, for example, the following:

1. A system that is part of the primary success path and that functions or actuates to mitigate a DBA or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier, would have been unable to perform its licensing-basis safety function had it been called upon to function.

c. SL III violations involve, for example, the following:

1. A licensee fails to shut down the reactor or follow remedial actions permitted by a technical specification action requirement when an LCO is not met (i.e., noncompliance with 10 CFR 50.36(c)(2)(i)).

2. A system that is part of the primary success path, and that functions or actuates to mitigate a DBA or transient that either assumes the failure of or presents a challenge to the integrity of the fission product barrier, is unable to perform its licensing-basis safety function because it is not fully qualified.

3. Changes in reactor parameters cause unanticipated reductions in margins to safety.

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12 The term “system” as used in these violation examples includes administrative and managerial control systems, as well as physical systems.

13 “Licensing-basis safety function” means the total safety function and is not directed toward a loss of redundancy. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

4. A licensee fails to adequately oversee contractors, which results in the use of safety-significant products or services that are defective or of indeterminate quality.

5. Equipment failures caused by inadequate or improper maintenance substantially complicate recovery from a plant transient.

6. A licensee violates 10 CFR 50.59 by failing to obtain a license amendment for a change that has a consequence evaluated ~~under the SDP~~ as having white, yellow, or red safety significance under the SDP.

7. A licensee fails to update the FSAR as required by 10 CFR 50.71(e), and the un-updated FSAR is used to perform a 10 CFR 50.59 evaluation for a change to the facility or procedures, implemented without Commission approval, that results in a condition evaluated as having white, yellow, or red safety significance under the SDP.

8. A licensee fails to retain records[14] as required by 10 CFR 50.71, "Maintenance of records, making of reports," 10 CFR Part 50, Appendix B, Criterion XVII, or 10 CFR 73.55(q), "Records" that results in~~with~~ a consequence evaluated ~~under the SDP~~ as having white, yellow, or red safety significance under the SDP.

d. SL IV violations involve, for example, the following:

1. A failure to comply with a technical specification action requirement demonstrates misapplication of the conventions in technical specifications Section 1.0, "Use and Application," or the allowances for LCO and surveillance requirement applicability in technical specifications section 3.0.

2. Violations of 10 CFR 50.59 result in conditions evaluated as having green safety significance under~~by~~ the SDP.

3. A licensee fails to update the FSAR as required by 10 CFR 50.71(e), and the lack of up-to-date information has a material impact on safety or licensed activities.

4. A licensee fails to adequately assess the risk of plant operations associated with implementation of a risk-informed technical specification allowance, so that the allowance is implemented inappropriately.

5. A licensee fails to retain records~~1414~~[13] as required by 10 CFR 50.71, 10 CFR Part 50, Appendix B, Criterion XVII, ~~or~~ 10 CFR 73.55(q), or other applicable record retention requirements where one of the following applies:

[14] This example is not limited to the record retention requirements in 10 CFR 50.71 and 10 CFR Part 50, Appendix B, Criterion XVII, or 10 CFR 73.55(g) and~~but~~ may apply to other regulatory requirements for record retention as related to technical specifications, fire protection, and licensed operators.

(a) The lack of recordkeeping substantively affects some aspect of the regulatory process, such as the NRC's ability to adequately perform inspection activities.

(b) A substantial number of similar types of records are affected, or the licensee routinely failed to retain similar types of records.

(c) The lack of record calls into question the operability or functionality of a safety-related structure, system, or component that cannot be readily determined to be operable or functional by retest or through alternative methods.

(d) The lack of a record adversely affected the licensee's ability to perform subsequent actions safely.

6.2 Fuel Cycle Operations

This section provides examples in the area of fuel cycle operations for licensees with an integrated safety analysis (ISA) under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," Subpart H, "Additional Requirements for Certain Licensees Authorized to Possess a Critical Mass of Special Nuclear Material," and for fuel cycle licensees without an ISA. The NRC will determine the appropriate severity level for a specific violation by using the licensee's ISA methodology and other applicable risk information.

a. SL I violations involve, for example, the following:

1. Under 10 CFR Part 70, Subpart H, a high-consequence event occurs.

2. For licensees not under 10 CFR Part 70, Subpart H, an event occurs that has a consequence commensurate with a 10 CFR Part 70, Subpart H, high-consequence event, as a result of licensed materials or hazardous chemicals produced from licensed materials.

b. SL II violations involve, for example, the following:

1. Under 10 CFR Part 70, Subpart H, a high-consequence event is "not unlikely" based on a licensee's ISA.

2. Under 10 CFR Part 70, Subpart H, an intermediate-consequence event occurs.

3. For licensees not under 10 CFR Part 70, Subpart H, a very substantial increase in the likelihood of a consequence commensurate with a 10 CFR Part 70, Subpart H, high-consequence event occurs.

4. For licensees not under 10 CFR Part 70, Subpart H, an event with a consequence commensurate with a 10 CFR Part 70, Subpart H, intermediate-consequence event occurs as a result of licensed materials or hazardous chemicals produced from licensed materials.

c. SL III violations involve, for example, the following:

1. Under 10 CFR Part 70, Subpart H, a high-consequence event is "unlikely" based on a licensee's ISA.

2. Under 10 CFR Part 70, Subpart H, an intermediate-consequence event is "not unlikely" based on a licensee's ISA.

3. For licensees not under 10 CFR Part 70, Subpart H, a substantial increase in the likelihood of a consequence commensurate with a Part 70, Subpart H, high-consequence event occurs.

4. For licensees not under 10 CFR Part 70, Subpart H, a significant increase in the likelihood of a consequence commensurate with a Part 70, Subpart H, intermediate-consequence event occurs.

5. Under 10 CFR 70.72, "Facility changes and change process," or 10 CFR 40.44, "Amendment of licenses at request of licensee," a significant failure to adequately evaluate a change to the facility results in implementation of the change without a required license amendment.

6. Under 10 CFR 70.24, " Criticality accident requirements," a criticality accident alarm system fails to provide either adequate detection or adequate annunciation coverage, without compensatory measures, for a substantial time period (e.g., 30 days or greater), during which operations involving the use or handling of fissile material occur in the areas affected (e.g., in a major processing area).

7. During an actual site area emergency, a licensee fails to promptly do any of the following:

   (a) Correctly classify and declare the event.

   (b) Make required notifications (i.e., notifications required by the licensee's emergency plan or 10 CFR 70.22(i)(3)) to responsible Federal, State, and local agencies.

   (c) Respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

8. A licensee fails to meet or implement more than one emergency planning requirement under 10 CFR 70.22(i)(3) involving assessment (other than emergency classification) or notification[15] during a site area emergency.

[15] As used in this example, "assessment" includes classification, assessment of the impact of a release of chemical or radioactivity, and the recommendation of protective actions. "Notification" includes initial and

d. SL IV violations involve, for example, the following:

1. Under 10 CFR Part 70, Subpart H, a licensee fails to meet the requirements of 10 CFR 70.61 (a)–(f), "Performance Requirements," and the failure does not result in an SL I, II, or III violation.

2. A failure of safety systems or controls occurs such that an acceptable safety margin has not been maintained, and the failure does not result in an SL I, II, or III violation.

3. Under 10 CFR 70.72 or 10 CFR 40.44, a less significant failure to adequately evaluate a change to the facility results in implementation of the change without a required license amendment. The failure does not result in an SL I, II, or III violation.

4. Under 10 CFR 70.24, a criticality accident alarm system fails to provide either adequate detection or adequate annunciation coverage without compensatory measures for a less substantial time period (e.g., less than 30 days), during which operations involving the use or handling of~~r using~~ fissile material occur in the areas affected ~~(e.g., in a major processing area)~~.

5. During an actual alert emergency, a licensee fails to promptly do any of the following:

   (a) Correctly classify and declare the event.

   (b) Make required notifications (i.e., notifications required by the licensee's emergency plan or 10 CFR 70.22(i)(3)) to responsible Federal, State, and local agencies).

   (c) Respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

6. A licensee fails to meet or implement more than one emergency planning requirement under 10 CFR 70.22(i)(3) involving assessment (other than emergency classification) or notification during an alert emergency.

7. A licensee fails to meet or implement any emergency planning requirement under 10 CFR 70.22(i)(3) not directly related to assessment and notification (e.g., emergency response training, emergency equipment maintenance).

follow-up notifications to offsite response organizations. For fuel facilities, this includes the risk-significant requirements in 10 CFR 70.22(i)(3).

6.3 Materials Operations

a. SL I violations involve, for example, the following:

1. A loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, results in serious injury or loss of life.

2. A system designed to prevent or mitigate a serious safety event is inoperable when actually required to perform its design function, and this results in serious injury or loss of life.

3. A failure to use a properly prepared written directive as required by 10 CFR 35.40, "Written directives," or a failure to develop, implement, or maintain procedures for administrations requiring a written directive as required by 10 CFR 35.41, "Procedures for administrations requiring a written directive," results in serious injury or loss of life.

4. A failure to have or to follow written operating procedures results in serious injury or loss of life.

b. SL II violations involve, for example, the following:

1. A loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, results in a substantial potential for significant injury or loss of life, whether or not radioactive material is released.

2. A system designed to prevent or mitigate a serious safety event is inoperable when actually required to perform its design function.

3. A substantial programmatic failure associated with written directives or procedures for administrations requiring a written directive, such as a failure of the licensee's procedures to address one or more of the elements in 10 CFR 35.40 or 10 CFR 35.41, or a failure to train personnel in those procedures, results in a medical event.

4. A failure to have or to follow written operating procedures results in a substantial potential for serious injury or death (e.g., a violation of 10 CFR 36.53, "Operating and emergency procedures," such that an event did not occur, but neither procedural nor system barriers, including interlocks, would have prevented it, and the event was not highly unlikely to occur).

c. SL III violations involve, for example, the following:

1. A system designed to prevent or mitigate a serious safety event has one of the following characteristics:

(a) It is unable to perform its intended function under certain conditions (e.g., a safety system is not operable unless the required backup power is available).

(b) It is outside design specifications to the extent that a detailed evaluation would be required to determine its operability.

2. There is a programmatic failure associated with written directives or procedures for administrations requiring a written directive, such as the following:

(a) A licensee's procedures fail to address one or more of the elements in 10 CFR 35.40 or 10 CFR 35.41.

(b) A licensee fails to train personnel in procedures for administrations requiring a written directive.

(c) A nonisolated failure occurs to use and follow written directives or procedures for administrations requiring a written directive.

(d) A licensee fails to have procedures or requirements for written directives or fails to have procedures for administrations that require written directives.

3. Except as provided for in section 6.3.d.10 of the Policy, a licensee fails to secure a portable gauge as required by 10 CFR 30.34(i).

4. A significant failure to implement the requirements of 10 CFR Part 34, "Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations," during radiographic operations occurs, including but not limited to the following:

(a) During radiographic operations at a location other than a permanent radiographic installation, a licensee fails to have present a radiographer and at least one additional radiographer or qualified individual.

(b) A licensee fails, during radiographic operations, to use radiographic equipment, radiation survey instruments, or personnel monitoring devices as required by 10 CFR Part 34.

(c) During radiographic operations, there is a failure to stop work after a pocket dosimeter is found to have gone off-scale or after an electronic dosimeter reads greater than 200 millirem (mrem), and before the individual's actual radiation exposure is determined.

5. An unqualified person conducts licensed activities. An unqualified person is characterized by either of the following:

(a) Lacking adequate qualifications, experience, or training to safely conduct

activities.

(b) Lacking the required certification or training for positions such as radiographer; authorized user under 10 CFR Part 35, “Medical Use of Byproduct Material”; or irradiator operator under 10 CFR 36.51, “Training.”

6. Licensed material is used on humans where such use is not authorized.

7. A licensee authorizes the release from its control of an individual who does not meet the release criteria in 10 CFR 35.75, “Release of individuals containing unsealed byproduct material or implants containing byproduct material.”

8. An individual who has not been trained as required by 10 CFR 36.51 operates an irradiator without supervision.

9. A failure to have or to follow written procedures (including, but not limited to, operating procedures or procedures related to recordkeeping, surveys, and inventories) occurs that has radiological or programmatic significance. Such failures are typically characterized by one or more of the following:

(a) Actual safety or security consequences with low significance.

(b) Potential safety or security consequences with greater than low significance.

(c) Widespread failures to have or to follow procedures (e.g., failure to have procedures for multiple activities within or among program areas, or failure to follow procedures where the occurrence is more than isolated ~~or is more than limited relative to the number of activities~~).

10. A programmatic failure occurs to perform inspection and maintenance checks as required by 10 CFR 36.61, “Inspection and maintenance.”

11. A licensee fails to seek required NRC approval before the implementation of a significant change in licensed activities that has radiological or programmatic significance, such as the following:

(a) A change in ownership.

(b) A change in the location where licensed activities are being conducted or where licensed material is being stored.

(c) An increase in the quantity or type of radioactive material being processed or used that has radiological significance.

(d) A change in program status with regard to the radiation safety officer (RSO) named on its license (e.g., the licensee fails to have an RSO or appoints an unqualified individual as RSO).

12. Significant failures occur involving decommissioning requirements, such as the following:

(a) A failure to meet decommissioning standards or requirements as required by regulation or license condition.

(b) A failure to make a required notification to the NRC in accordance with a license condition or with the regulations at 10 CFR 30.36, 10 CFR 40.42, 10 CFR 70.38, or 10 CFR 72.54, and to submit a decommissioning plan to the NRC if a decommissioning plan is required.

(c) A failure to complete decommissioning as required without having requested an alternate schedule for completing decommissioning in accordance with NRC regulations.

13. A licensee fails to secure a well logging source to prevent tampering with or removal of licensed material by unauthorized personnel, in accordance with 10 CFR 39.31, "Labels, security, and transportation precautions," where the source was not continuously within a restricted area.

d. SL IV violations involve, for example, the following:

1. A licensee fails to use a properly prepared written directive as required by 10 CFR 35.40, or fails to develop, implement, or maintain procedures for administrations requiring a written directive as required by 10 CFR 35.41, whether or not a medical event occurs, provided that the failures are characterized by all of the following:

(a) They are isolated.

(b) They do not demonstrate programmatic weaknesses.

(c) If a medical event is involved, they have limited consequences.

2. A licensee fails to keep the records required by 10 CFR 35.2040, "Records of written directives," and 10 CFR 35.2041, "Records for procedures for administrations requiring a written directive."

3. A licensee fails to have or to follow written procedures (including, but not limited to, operating procedures or procedures related to recordkeeping, surveys, and inventories), and the failure has less serious but more than minor radiological or programmatic significance. Such failures are typically characterized by one or more of the following:

(a) They have no actual safety or security consequences.

(b) They have potential safety or security consequences of low significance.

(c) They are ~~limited or~~ isolated failures to have or to follow procedures.

4. A licensee fails to document the required certification or training for positions such as radiographer, authorized user under 10 CFR Part 35, or irradiator operator under 10 CFR 36.51.

5. A licensee fails to seek required NRC approval before the implementation of a change in ownership that has little or no adverse impact on radiological or programmatic activities or on the NRC's ability to inspect licensed activities, so that the unauthorized license transfer does not affect activity locations and types.

6. A licensee fails to seek required NRC approval before replacing the RSO, where the new RSO has been evaluated as qualified.

7. A licensee fails to seek NRC approval, when required, before changing the location where licensed activities are being conducted or where licensed material is being stored, but the failure has little or no radiological or programmatic significance, and all other safety and security requirements have been met.

8. A licensee fails to secure a portable gauge as required by 10 CFR 30.34(i), when the gauge is not under the licensee's control and constant surveillance, but where one level of physical control exists, there is no actual loss of material, and the failure is isolated.

9. Less significant failures occur involving decommissioning requirements, such as the following:

(a) A failure to make a required notification to~~y~~ the NRC in accordance with a license condition or with the regulations at 10 CFR 30.36, 10 CFR 40.42, or 10 CFR 70.38, ~~unless~~ when a decommissioning plan is not required, and in the absence of any other decommissioning violations.

(b) A failure to begin decommissioning in accordance with the regulations at 10 CFR 30.36, 10 CFR 40.42, or 10 CFR 70.38, ~~unless~~ when a decommissioning plan is not required, and in the absence of any other decommissioning violations.

(c) A failure to submit a decommissioning plan to the NRC within 12 months of making the notifications required in 10 CFR 30.36, 10 CFR 40.42, 10 CFR 70.38, or 10 CFR 72.54 without having requested an alternative schedule for submission of the plan in accordance with NRC regulations.

(d) A failure to complete decommissioning as required if (1) the licensee only possessed sealed sources with no external contamination, and (2) upon

identification of the violation (by either the licensee or the NRC), the licensee disposed of its material and requested termination of its NRC license.

10. An isolated failure occurs to maintain control and constant surveillance over a portable gauge, provided that all of the following apply:

    (a) The portable gauge was being actively used (e.g., the user was preparing for or taking measurements, or the failure occurred immediately after measurements were taken).

    (b) The noncompliance was of short duration.

    (c) The failure could not reasonably have resulted in unauthorized access (e.g., no unauthorized individual had direct contact with the gauge).

    (d) There was no or relatively inappreciable unintended exposure to any individual (e.g., the portable gauge may have been physically damaged, but there was no contamination or source leakage, and the licensee was able to retract the source into a shielded position).

11. A licensee fails to seek required NRC approval before implementing an increase in the quantity of regulated material that has little to no adverse radiological or programmatic impact.

12. A licensee fails to secure a well logging source to prevent tampering with or removal of licensed material by unauthorized personnel, in accordance with 10 CFR 39.31, where the source was continuously within a restricted area.

6.4 Licensed Operators

Error, as used in this section, is defined as a licensed operator's omission or commission in relation to a degraded or nonconforming structure, system, or component; or to a licensed operator's noncompliance with a regulatory requirement or a self-imposed facility standard.

a. SL I violations involve, for example, the following:

1. An individual licensed under 10 CFR Part 55 (licensed operator) and actively performing the functions covered by that position is involved in an error that resulted in, or exacerbated the consequences of, an alert or higher level emergency, and at the time the error occurred, was determined to be any of the following:

    (a) Unfit for duty as the result of a confirmed positive test for drugs or alcohol at cutoff levels established by the licensee.

(b) Under the influence of any prescription or over-the-counter drug as described in 10 CFR 55.53, “Conditions of licenses.”

(c) Unfit for duty as determined by a postevent fatigue assessment required by 10 CFR 26.211(a)(3).

(d) In willful noncompliance with a condition stated on the individual’s license or 10 CFR 55.53.

b. SL II violations involve, for example, the following:

1. A licensed operator actively performing the functions covered by that position is involved in an error that has resulted in or could have resulted in significant safety or security consequences, such as an error that results in a transient that requires safety systems to mitigate, or an error that results in the unavailability of a system important to safety, and, at the time the error occurred, was determined to be any of the following:

   (a) Unfit for duty as a result of a confirmed positive test for drugs or alcohol at cutoff levels established by the facility licensee.

   (b) Under the influence of any prescription or over-the-counter drug as described in 10 CFR 55.53.

   (c) Unfit for duty as determined by a postevent fatigue assessment required by 10 CFR 26.211(a)(3).

   (d) In willful noncompliance with a condition stated on the individual’s license or 10 CFR 55.53.

2. A licensed operator deliberately compromises (see 10 CFR 55.49, “Integrity of examinations and tests”) an application, test, or examination required by 10 CFR Part 55, or deliberately provides inaccurate or incomplete information to the NRC, resulting in any of the following:

   (a) In the case of initial licensed operator licensing, the act contributes to an individual being granted a licensed operator license.

   (b) In the case of licensed operator requalification, the act contributes to an individual being permitted to continue to perform the functions of a licensed operator.

   (c) The act contributes to a medically unqualified individual performing the functions of a licensed operator.

3. A licensed operator, while within the protected area, is involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages.

c. SL III violations involve, for example, the following:

1. A licensed operator actively performing the functions covered by that position is determined to be any of the following:

   (a) Unfit for duty as a result of a confirmed positive test for drugs or alcohol at cutoff levels established by the licensee.

   (b) Under the influence of any prescription or over-the-counter drug as described in 10 CFR 55.53.

   (c) Unfit for duty as determined by a postevent fatigue assessment required by 10 CFR 26.211(a)(3).

2. In addition to being in noncompliance with a 10 CFR 55.53 requirement (or a license condition other than a medical condition), a licensed operator actively performing the functions covered by that position commits an error that has or could have significant safety or security consequences, such as an error that results in a transient that requires safety systems to mitigate, or an error that results in the unavailability of a system important to safety.

3. A licensed operator actively performing the functions covered by that position is inattentive to duty.

4. A licensed operator is involved in the use, sale, or possession of illegal drugs.

5. A nonwillful compromise (see 10 CFR 55.49) of an application, test, or examination required by 10 CFR Part 55, or inaccurate or incomplete information inadvertently provided to the NRC, subsequently contributes to the NRC's making an incorrect regulatory decision, and has any of the following effects:

   (a) In the case of initial licensed operator licensing, it contributes to an individual's being granted a licensed operator license that should not have been granted.

   (b) In the case of licensed operator requalification, it contributes to an individual's being permitted to continue to perform the functions of a licensed operator when they should not have been permitted to do so.

   (c) It contributes to a medically unqualified individual's performing the functions of a licensed operator.

6. A licensed operator actively performing the functions covered by that position, is determined to be in noncompliance with a medical condition stated on the individual's license and to exceed the applicable industry standard.[16]

[16] Section 5, "Health Requirements and Disqualifying Conditions," of American National Standards

d. SL IV violations involve, for example, the following:

1. There is a nonwillful compromise of an application, test, or examination required by 10 CFR Part 55, such as one of the following:

   (a) Inaccurate or incomplete information is inadvertently provided to the NRC, but the NRC does not make an incorrect regulatory decision as a result of the originally submitted information.

   (b) A licensed operator does not meet the applicable industry standard as certified on NRC Form 396, "Certification of Medical Examination by Facility Licensee," which is required by 10 CFR 55.23, "Certification," but has not performed the functions of a licensed operator while having a disqualifying medical condition.

   (c) A licensed operator does not meet the applicable industry standard as certified on NRC Form 396, which is required by 10 CFR 55.23, because of an incomplete medical examination, but is subsequently found to meet the health requirements for licensing.

   (d) A licensed operator meets the applicable industry standard as certified on NRC Form 396, which is required by 10 CFR 55.23, but fails to report a medical condition that would have required a license restriction to establish or maintain medical qualification.

   (e) A licensed operator actively performs the functions covered by that position, in noncompliance with requirements based on a medical condition stated on the individual's license, but does not violate the applicable industry standard or commit any error that has or could have significant safety or security consequences.

2. A licensed operator actively performing the functions covered by that position is in noncompliance with a 10 CFR 55.53 requirement (or a license condition other than a medical condition) but does not commit any error that has or could have significant safety or security consequences.

6.5 Facility Construction (10 CFR Parts 50 and 52 Licensees and Fuel Cycle Facilities)

a. SL I violations involve, for example, the following:

1. A significant breakdown of a licensee's QA program results in the completion of

Institute/American Nuclear Society (ANSI/ANS) 3.4, "Medical Certification and Monitoring of Personnel Requiring Operator Licenses for Nuclear Power Plants," or Section 7, "Medical Certification and Monitoring of Licensed Personnel," of ANSI/ANS 15.4, "Selection and Training of Personnel for Research Reactors."

multiple structures, systems, or components[17] in a manner such that they would not have fulfilled their intended safety purpose.

b. SL II violations involve, for example, the following:

1. A significant breakdown occurs in the QA program, as exemplified by multiple deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). These deficiencies involve the licensee's failure to provide adequate oversight or take prompt corrective action, and they entail multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation.

2. Multiple structures, systems, or components are completed in a manner that would adversely affect the safety of operations.

c. SL III violations involve, for example, the following:

1. A breakdown occurs in a licensee's QA program for construction related to a single work activity (e.g., structural, piping, electrical, foundations). This significant deficiency involves the licensee's failure to provide adequate oversight or take prompt corrective action, and it entails multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation.

2. A licensee fails to confirm the design safety requirements of a structure, system, or component as a result of inadequate preoperational test program implementation.

3. Ineffective corrective actions result in multiple examples of recurring significant deficiencies associated with a single construction activity.

4. A licensee violates 10 CFR 50.59, or 10 CFR 52.98, "Finality of combined licenses; information requests," by failing to obtain a license amendment for a change that has a consequence evaluated under the SDP as having white, yellow, or red safety significance.

5. A licensee fails to update the FSAR as required by 10 CFR 50.71(e), and the FSAR is used to perform a 10 CFR 50.59 or 10 CFR 52.98 evaluation for a change to the facility or procedures, implemented without Commission approval, that results in a condition evaluated as having white, yellow, or red safety significance under the SDP.

d. SL IV violations involve, for example, the following:

1. A licensee fails to meet regulatory requirements, including one or more QA criteria that have more than minor safety or security significance.

[17] The term "completion" as used in this example means completion of a construction activity, including review and acceptance by the construction quality control or QA organization.

2. A licensee fails to establish, maintain, or implement adequate controls over procurement, construction, examination, or testing processes that are important to safety.

3. A licensee fails to adequately implement QA processes or procedures.

4. A licensee fails to maintain QA records to demonstrate the adequacy of construction.

5. A licensee fails to implement adequate 10 CFR Part 21 processes or procedures that have more than minor safety or security significance.

6. Violations of 10 CFR 50.59 or 10 CFR Part 52, Appendices A–D result in conditions evaluated as having very low safety significance.

7. A licensee has failed to update the FSAR as required by 10 CFR 50.71(e), but the lack of up-to-date information has not resulted in any unacceptable change to the facility or procedures.

6.6 Emergency Preparedness

These examples are appropriate for violations at power reactor facilities that are dispositioned under traditional enforcement rather than under the ROP or cROP. For operating power reactors, the NRC treats participant performance deficiencies identified in emergency exercises under the ROP. This section also provides examples of violations in the area of emergency preparedness at nonpower reactor facilities.

a. SL I violations involve, for example, the following:

1. During an actual general emergency, a licensee fails to promptly do any of the following:

   (a) Correctly classify and declare the event.

   (b) Make required notifications (i.e., notifications required by the licensee's emergency plan; 10 CFR 50.72, "Immediate notification requirements for operating nuclear power reactors," or by Appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities," to 10 CFR Part 50) to responsible Federal, State, and local agencies.

   (c) Respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

b. SL II violations involve, for example, the following:

1. During an actual site area emergency, a licensee fails to promptly do any of the following:

   (a) Correctly classify and declare the event.

   (b) Make required notifications (i.e., notifications required by the licensee's emergency plan, 10 CFR 50.72, or Appendix E to 10 CFR Part 50) to responsible Federal, State, and local agencies.

   (c) Respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

2. A licensee loses its ability to meet or implement any regulatory requirement related to assessment (other than emergency classification) or notification[18] so that the required function would not be implemented during the response to an actual emergency.

3. An emergency action level (EAL) initiating condition (IC) has been rendered ineffective so that a general emergency would not be declared for a particular off-normal event.[19]

c. SL III violations involve, for example, the following:

1. During an actual alert emergency, a licensee fails to promptly do any of the following:

   (a) Correctly classify and declare the event.

   (b) Make required notifications (i.e., notifications required by the licensee's emergency plan, 10 CFR 50.72, or 10 CFR Part 50, Appendix E) to responsible Federal, State, and local agencies.

   (c) Respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

[18] As used in this example, "assessment" includes classification, assessment of the impact of a release of radioactivity, and the making of protective action recommendations. "Notification" includes initial and follow-up notifications to offsite response organizations. For power reactors, this includes the risk-significant planning standards in paragraphs (4), (5), (9), and (10) of 10 CFR 50.47(b). For examples of conditions that may cause a required function not to be implemented, or to be implemented in a degraded manner, see the Emergency Preparedness SDP.

[19] An EAL IC may be rendered ineffective by changes to facility procedures, systems, or equipment; errors in numeric thresholds; or any other change that could prevent the timely and accurate declaration of an IC.

2. A licensee's ability to meet or implement any regulatory requirement related to assessment (other than emergency classification) or notification is degraded so as to decrease the effectiveness of the emergency plan. Although the regulatory requirement could be implemented during the response to an actual emergency, the implementation would be degraded (e.g., not fully effective, inappropriately delayed).
3. An EAL IC has been rendered ineffective so that a general emergency would not be declared for a particular off-normal event, but because of redundant EALs for that IC, an appropriate declaration could be made, although not within the required 15-minute window.

4. An EAL IC has been rendered ineffective so that a site area emergency would not be declared for a particular off-normal event.

5. A licensee's ability to meet or implement a regulatory requirement *not* related to assessment or notification is lost, so that the required function would not be implemented during the response to an actual emergency.

d. SL IV violations involve, for example, the following:

1. The licensee's ability to meet or implement a regulatory requirement *not* related to assessment or notification is degraded, decreasing the effectiveness of the emergency plan. Although the regulatory requirement could be implemented during the response to an actual emergency, the implementation would be degraded (e.g., not fully effective, inappropriately delayed).

2. An EAL IC has been rendered ineffective so that a general emergency would not be declared for a particular off-normal event, but because of redundant EALs for that IC, an accurate and timely declaration could still be made.

3. An EAL IC has been rendered ineffective so that a site area emergency would not be declared for a particular off-normal event, but because of redundant EALs for that IC, an appropriate declaration could be made, although not within the required 15-minute window.

4. An EAL IC has been rendered ineffective so that an alert emergency or notice of unusual event would not be declared, or would be declared in a degraded manner, for a particular off-normal event.

6.7 Health Physics

Personnel overexposures and associated violations incurred during a lifesaving or other emergency response effort will be treated on a case-by-case basis.

a. SL I violations involve, for example, the following:

1. An adult worker receives a radiation exposure during any year in excess of 25 rem (0.25 sievert (Sv)) total effective dose equivalent (TEDE); 75 rem

(0.75 Sv) to the lens of the eye; or 250 rem (2.5 Sv) to the skin of the whole body, or to the feet, ankles, hands, or forearms, or to any other organ or tissue.

2. A declared pregnant woman receives a radiation exposure over the gestation period of the embryo/fetus of 2.5 rem (0.025 Sv) TEDE.

3. A minor worker (i.e., an individual less than 18 years of age) receives a radiation exposure during any year in excess of 2.5 rem (0.025 Sv) TEDE; 7.5 rem (0.075 Sv) to the lens of the eye; or 25 rem (0.25 SV) to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue.

4. A member of the public receives an annual exposure in excess of 1 rem (0.01 Sv) TEDE.

5. A release of radioactive material occurs to an unrestricted area in annual average concentrations in excess of 50 times the limits for members of the public as stated in 10 CFR 20.1302(b)(2)(i).

6. Disposal of licensed material occurs in quantities or concentrations in excess of 10 times the limits of 10 CFR 20.2003, “Disposal by release into sanitary sewerage.”

b. SL II violations involve, for example, the following:

1. An adult worker receives a radiation exposure during any year in excess of 10 rem (0.1 Sv) TEDE; 30 rem (0.3 Sv) to the lens of the eye; or 100 rem (1.0 Sv) to the skin of the whole body, or to the feet, ankles, hands, or forearms, or to any other organ or tissue.

2. A declared pregnant woman receives a radiation exposure over the gestation period of the embryo/fetus in excess of 1.0 rem (0.01 Sv) TEDE.

3. A minor worker receives a radiation exposure during any year in excess of 1.0 rem (0.01 Sv) TEDE; 3.0 rem (0.03 Sv) to the lens of the eye; or 10 rem (0.1 Sv) to the skin of the whole body, or to the feet, ankles, hands, or forearms, or to any other organ or tissue.

4. A member of the public receives an annual exposure in excess of 0.5 rem (5 millisieverts (mSv)) TEDE.

5. Release of radioactive material occurs to an unrestricted area in annual average concentrations in excess of 10 times the limits stated in 10 CFR 20.1302(b)(2)(i) (except when the Commission has approved operation up to 0.5 rem (5 mSv) per year under 10 CFR 20.1301(c)).

6. Disposal of licensed material occurs in quantities or concentrations in excess of 5 times the limits of 10 CFR 20.2003.

7. A licensee (1) loses and subsequently recovers regulated material (i.e., loss of control), or (2) loses, abandons, or improperly transfers or disposes of regulated material. To the extent that the activity, form, half-life, and circumstances of loss and recovery are known, t~~T~~he action results in actual public or occupational exposures in excess of the applicable limits in 10 CFR Part 20, or a likely potential for such exposures to occur~~, based on the extent to which the activity, form, half-life, and circumstances of loss and recovery are known~~.

c. SL III violations involve, for example, the following:

1. An adult worker receives a radiation exposure during any year in excess of 5 rem (0.05 Sv) TEDE; 15 rem (0.15 Sv) to the lens of the eye; or 50 rem (0.5 Sv) to the skin of the whole body or to the feet, ankles, hands, or forearms, or to any other organ or tissue.

2. A declared pregnant woman receives a radiation exposure over the gestation period of the embryo/fetus in excess of 0.5 rem (5 mSv) TEDE (except when doses are in accordance with the provisions of 10 CFR 20.1208(d)).

3. A minor worker receives a radiation exposure during any year in excess of 0.5 rem (5 mSv) TEDE; 1.5 rem (0.015 Sv) to the lens of the eye; or 5 rem (0.05 Sv) to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue.

4. A member of the public receives an annual exposure in excess of 0.1 rem (1 mSv) TEDE (except when operation up to 0.5 rem (5 mSv) per year under 10 CFR 20.1301(c)).

5. Release of radioactive material occurs to an unrestricted area in annual average concentrations in excess of 2 times the effluent concentration limits stated in 10 CFR 20.1302(b)(2)(i) (except when the Commission has approved operation up to 0.5 rem (5 mSv) per year under 10 CFR 20.1301(c)).

6. A substantial potential exists for exposures or releases in excess of the applicable limits in 10 CFR 20.1001–20.2401, whether or not an exposure or release occurs.

7. Disposal of licensed material occurs in quantities or concentrations in excess of the regulatory limits of 10 CFR 20.2003.

8. A licensee releases, for unrestricted use, contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public exceeding the annual dose limits for members of the public.

9. A technically unqualified person conducts licensee activities.

10. A licensee fails to secure, or maintain surveillance over, licensed material in any of the following situations:

(a) The aggregate quantity of licensed material is greater than 1,000 times the quantity specified in Appendix C, "Quantities of Licensed Material Requiring Labeling," to 10 CFR Part 20.

(b) The aggregate quantity of licensed material is greater than 10 times the quantity specified in Appendix C to 10 CFR Part 20, and the failure is accompanied by the absence of a functional program to detect and deter security violations that includes training, staff awareness, detection (including auditing), and corrective action (including disciplinary action).

(c) The violation results in a substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20.

11. A licensee (1) loses and subsequently recovers regulated material (i.e., loss of control), or (2) loses, abandons, or improperly transfers or disposes of regulated material. To the extent that the activity, form, half-life, and circumstances of loss and recovery are known, the action result in ~~Such violations involve~~ neither an actual public or occupational exposure in excess of the applicable limits in 10 CFR Part 20, nor a likely potential for such exposures to occur~~, based on the extent to which the activity, form, half-life, and circumstances of loss and recovery are known~~.

d. SL IV violations involve, for example, the following:

1. Intakes exceed those specified in 10 CFR 20.1201(e) or the equivalent for 10 CFR 20.1207, "Occupational dose limits for minors."

2. A release of radioactive material occurs to an unrestricted area in annual average concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when the Commission has approved operation up to 0.5 rem (5 mSv) per year under 10 CFR 20.1301(c)).

3. A radiation dose rate in an unrestricted or controlled area exceeds 0.002 rem (0.02 mSv) in any 1 hour (2 mrem/hour) or 50 mrem (0.5 mSv) in a year.

4. A licensee fails to conduct required leakage or contamination tests or to use properly calibrated equipment, although the failure does not contribute to an event.

5. Doses to a member of the public exceed any of the U.S. Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," as required by 10 CFR 20.1301(e).

6. An isolated failure occurs to secure, or maintain surveillance over, licensed material in any aggregate quantity greater than 10 times the quantity specified in Appendix C to 10 CFR Part 20, provided that both of the following apply:

(a) The material is labeled as radioactive or located in an area posted as containing radioactive materials.

(b) The failure occurs despite the existence of a functional program to detect and deter security violations that includes training, staff awareness, detection (including auditing), and corrective action (including disciplinary action).

7. A licensee (1) loses and subsequently recovers regulated material (i.e., loss of control), or (2) loses, abandons, or improperly transfers or disposes of regulated material. To the extent that the activity, form, half-life, and circumstances of loss and recovery are known, the action~~violation~~ involves no or relatively inappreciable risk because there is low potential for public or occupational exposure. ~~Violations~~ Actions that involve no or relatively inappreciable risk include, but are not limited to, the following situations:

(a) The loss of regulated material is associated with a generally licensed device not requiring registration under 10 CFR 31.5(c)(13)(i).

(b) The loss of regulated material is associated with limited quantities of low-activity sealed sources that can reasonably be presumed to be intact and have a half-life of less than 120 days (e.g., one or two seeds of iodine-125).

6.8 Transportation

Some transportation requirements apply to more than one licensee involved in the same activity (e.g., a shipper and a carrier). When such requirements are violated, the NRC will direct enforcement action against the responsible licensee or licensees.

a. SL I violations involve, for example, the following:

1. A failure to meet transportation requirements results in loss of control of radioactive material with a breach in package integrity such that the material causes a radiation exposure to a member of the public in excess of the regulatory limits.

2. Surface contamination exceeds 50 times the NRC limit.

3. External radiation levels exceed 10 times the NRC limit.

b. SL II violations involve, for example, the following:

1. A failure to meet transportation requirements results in loss of control of radioactive material with a breach in package integrity such that there is a clear potential for a member of the public to receive a radiation exposure in excess of the regulatory limits.

2. Surface contamination exceeds 10 times, but does not exceed 50 times, the NRC limit.

3. External radiation levels exceed 5 times, but does not exceed 10 times, the NRC limit.

4. A licensee fails to make the required initial notifications associated with an SL I or II violation.

c. SL III violations involve, for example, the following:

1. Surface contamination exceeds 5 times, but does not exceed 10 times, the NRC limit.

2. External radiation exceeds the NRC limit, but is not more than 5 times, the NRC limit.

3. A violation involves marking, labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in any of the following:

(a) A significant failure to identify the type, quantity, or form of material.

(b) A failure of the carrier or recipient to exercise adequate controls.

(c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material.

4. A licensee fails to make the required initial notifications associated with an SL III violation.

d. SL IV violations involve, for example, the following:

1. A breach of package integrity occurs, but external radiation levels and contamination levels do not exceed the NRC limits.

2. Surface contamination exceeds the NRC limit, but is not more than 5 times the NRC limit.

3. A licensee fails to register as an authorized user of an NRC-certified transport package.

4. A licensee fails to demonstrate that packages for special-form radioactive material meet applicable regulatory requirements.

5. A licensee fails to demonstrate that U.S. Department of Transportation specifications are met for 7A Type A packages as required by 10 CFR 71.5,

"Transportation of licensed material."

6. A licensee fails to comply with the U.S. Department of Transportation requirement to provide hazardous material employee training as required by 10 CFR 71.5(a).

6.9 Inaccurate and Incomplete Information or Failure to Make a Required Report

a. SL I violations involve, for example, the following:

1. A licensee official deliberately provides or maintains information known by the licensee official to be incomplete or inaccurate. If the information had been completely and accurately provided or maintained, it would likely have caused the NRC to issue an order requiring suspension or cessation of licensed activity or other immediate action to protect public health and safety or the common defense and security.

   (a) For example, deliberately incomplete or inaccurate information associated with an inspections, tests, analyses, and acceptance criteria (ITAAC) notification letter is submitted in accordance with 10 CFR 52.99, "Inspection during construction." If the information had been complete and accurate, the NRC would likely have issued an order halting a significant portion of construction activities.

2. A deliberate withholding of information or a deliberate failure to make a required report occurs. If the information had been provided or the report been made, it would likely have caused the NRC to issue an order requiring suspension or cessation of licensed activity or other immediate action to protect public health and safety or the common defense and security.

3. A licensee official provides or maintains information with careless disregard of its completeness or accuracy. If this information had been completely and accurately provided or maintained, it would likely have caused the NRC to issue an order requiring suspension or cessation of licensed activity or other immediate action to protect public health and safety or the common defense and security.

   (a) For example, a licensee official submits incomplete or inaccurate information associated with an ITAAC notification letter, in accordance with 10 CFR 52.99, with careless disregard for its completeness and accuracy. If the information had been complete and accurate, the NRC would likely have issued an order halting a significant portion of construction activities.

4. A withholding of information or a failure to make a required report occurs, with careless disregard of the underlying requirement. If the information had been provided or the report been made, it would likely have caused the NRC to issue an order requiring suspension or cessation of licensed activity or other immediate action to protect public health and safety or the common defense and security.

5. A deliberate failure to notify the Commission as required by 10 CFR Part 21.

b. SL II violations involve, for example, the following:

1. A licensee official deliberately provides or maintains information known by the licensee official to be incomplete or inaccurate. If the information had been completely and accurately provided or maintained, it would likely have caused the NRC to reconsider a regulatory position or undertake a substantial further inquiry.

   (a) For example, a licensee official deliberately provides incomplete or inaccurate information associated with an ITAAC notification letter, submitted in accordance with 10 CFR 52.99. If the information had been complete and accurate, the NRC would likely have rejected closure of that ITAAC.

2. A licensee official provides or maintains information with careless disregard of its completeness or accuracy. If this information had been completely and accurately provided or maintained, it would likely have caused the NRC to reconsider a regulatory position or undertake a substantial further inquiry.

   (a) For example, a licensee official provides incomplete or inaccurate information associated with an ITAAC notification letter, submitted in accordance with 10 CFR 52.99, with careless disregard for its completeness and accuracy. If the information had been complete and accurate, the NRC would have likely rejected closure of that ITAAC.

3. A deliberate withholding of information or a deliberate failure to make a required report occurs. If the information had been provided or the report been made, the NRC would likely have reconsidered a regulatory position or undertaken substantial further inquiry.

4. A withholding of information or a failure to make a required report occurs with careless disregard of the underlying requirement. If the information had been provided or the report been made, the NRC would likely have reconsidered a regulatory position or undertaken substantial further inquiry.

5. Inaccurate or incomplete information is provided or maintained. If this information had been completely and accurately provided or maintained, it would likely have caused the NRC to issue an order requiring suspension or cessation of licensed activity or other immediate action to protect public health and safety or the common defense and security.

6. A withholding of information or a failure to make a required report occurs. If the information had been provided or the report been made, it would likely have caused the NRC to issue an order requiring suspension or cessation of licensed activity or other immediate action to protect public health and safety or the

common defense and security.

7. A licensee fails to make an immediate notification as required by 10 CFR 20.2202(a)(1) or (a)(2).

8. A deliberate failure to notify the Commission as required by 10 CFR 50.55(e), takes place.

c. SL III violations involve, for example, the following:

1. Inaccurate or incomplete information is provided or maintained. If this information had been completely and accurately provided or maintained, it would likely have caused the NRC to reconsider a regulatory position or undertake a substantial further inquiry.

   (a) For example, incomplete or inaccurate information associated with an ITAAC notification letter, submitted in accordance with 10 CFR 52.99, is submitted. If this information had been complete and accurate, the NRC would likely have rejected closure of that ITAAC.

2. A withholding of information or a failure to make a required report occurs. If this information had been provided or the report been made, it would likely have caused the NRC to reconsider a regulatory position or undertake a substantial further inquiry. The following are examples:

   (a) Failure to make a 24-hour notification required by 10 CFR 20.2202(b) or an immediate notification required by 10 CFR 20.2201(a)(1)(i).

   (b) Failure to make any report required by 10 CFR 73.71, “Reporting of safeguards events,” or Appendix G, “Reportable Safeguards Events,” to 10 CFR Part 73, “Physical Protection of Plants and Materials”; or 10 CFR Part 26, “Fitness for Duty Programs.”

   (c) Failure to submit an initial NRC Form 241, “Report of Proposed Activities in Non-agreement States,” as required by 10 CFR 150.20, “Recognition of Agreement State licenses.”

   (d) For materials licensees, failure to make an immediate or 24-hour report or notification when required.

   (e) Failure to make a report required by 10 CFR 50.72, or 10 CFR 50.73, “Licensee event report system,” associated with any SL III violation.

   (f) Failure to make a report required by 10 CFR 72.74, “Reports of accidental criticality or loss of special nuclear material,” 10 CFR 72.75, “Reporting requirements for specific events and conditions,” or 10 CFR 72.242(d), “Recordkeeping and reports.”

3. A programmatic failure to comply with 10 CFR 20.2207, "Reports of transactions involving nationally tracked sources," occurs.

4. A 10 CFR Part 50 licensee submits inaccurate or incomplete performance indicator (PI) data to the NRC. Accurate or complete information would have caused a PI to change from green to either yellow or red, white to either yellow or red, or yellow to red.

5. A licensee fails to provide the notice required by 10 CFR Part 21 or 10 CFR 50.55(e), for example, one of the following occurs:

   (a) An inadequate review or failure to review occurs such that, if an appropriate review had been made as required, a 10 CFR Part 21 or 10 CFR 50.55(e) report would have been required.

   (b) A withholding of information or a failure to make a required interim report by 10 CFR 21.21, "Notification of failure to comply or existence of a defect and its evaluation," or 10 CFR 50.55(e) occurs with careless disregard.

d. SL IV violations involve, for example, the following:

1. A licensee fails to make a required report that, had it been submitted, would have resulted in, for instance, an increase in the scope of the next regularly scheduled inspection.

2. A licensee fails to make a timely written report as required by 10 CFR 20.2201(b), 10 CFR 20.2204, 10 CFR 20.2206, or 10 CFR 20.2207.

3. A licensee fails to report an exceedance of the dose constraint established in 10 CFR 20.1101(d).

4. A licensee fails to make a report as required by 10 CFR 26.719(d).

5. A licensee fails to make a report required by 10 CFR 76.120(d)(2), Appendix A to 10 CFR Part 70, or 10 CFR 70.50(c)(1).

6. A licensee fails to make a written event report, as required by 10 CFR 70.50(c)(1), Appendix A to 10 CFR Part 70, or 10 CFR 76.120(d)(2).

7. A materials licensee fails to provide or make a 15-day or 30-day written report or notification; fails to include all information required by regulation or license condition in a 15-day or 30-day report or notification; or is late making a report to the NRC required by 10 CFR 35.3045, "Report and notification of a medical event," or 10 CFR 35.3047, "Report and notification of a dose to an embryo/fetus or a nursing child," that does not affect the NRC's regulatory response.

8. A licensee fails to provide the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 10 CFR 20.2203(a).

9. A licensee fails to make a report required by 10 CFR 50.72 or 10 CFR 50.73.

10. A licensee fails to identify all applicable reporting codes on a licensee event report, and that failure may affect the completeness or accuracy of other information (e.g., performance indicator (PI) data) submitted to the NRC.

11. A 10 CFR Part 50 licensee submits inaccurate or incomplete PI data to the NRC, and accurate data would have caused a PI to change from green to white.

12. A licensee fails to make an interim report required by 10 CFR 21.21(a)(2) or under 10 CFR 50.55(e).

13. A licensee fails to implement adequate 10 CFR Part 21, or 10 CFR 50.55(e) processes or procedures, and that failure has more than minor safety or security significance.

14. A materials licensee fails to provide the NRC with a Form 241, and all of the following apply:

    (a) The licensed activity is not of a type designated as NRC Priority 1, 2, or 3 inspection (as identified in the applicable NRC IMC).

    (b) The licensee has not previously violated the requirement.

    (c) The facts of the specific case would not have otherwise led to an onsite inspection by the NRC.

    (d) The circumstances of the case generally include either a failure to file an amended Form 241 for additional work locations of limited scope, or a failure to provide an initial Form 241 for work of very limited scope and single occurrence, spanning a few days, within NRC jurisdiction (e.g., portable radiological gauge use).

15. A licensee fails to make a timely report required by 10 CFR 72.75 or 10 CFR 72.242(d).

6.10 Discrimination

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated. Conversely, the severity level of a violation of an NRC employee protection regulation may be mitigated to a lower severity level based on factors unique to the specific facts and circumstances of the case.

a. SL I violations involve, for example, the following:

1. An executive-level corporate manager (or equivalent) (which for this definition includes a site vice president) is the decision-maker, or plays a significant role in the adverse action decision-making process, regardless of the severity of the adverse action, but with at least one of the following escalating factors:

   (a) The adverse action against the employee had a widespread site impact on other employees' willingness to raise concerns.

   (b) The employer failed to take meaningful action to investigate and address the allegation of discrimination, if the allegation was first raised internally within the employer's processes for addressing employee concerns.

2. A mid-or a senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decision-maker or plays a significant role in the adverse action decision-making process; the employment action is relatively more adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., suspension without pay); and either a.1(a) or a.1(b) above is cited, or other unique factors are present.

b. SL II violations involve, for example, as follows:

1. An executive-level corporate manager (or equivalent) (which for this definition includes a site vice president) is the decision-maker, or plays a significant role in the adverse action decision-making process, regardless of the severity of the adverse action, but without an escalating factor present.

2. A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decision-maker, or plays a significant role in the adverse action decision-making process; the employment action is relatively more adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., suspension without pay); and no escalating factor is present.

3. A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decision-maker, or plays a significant role in the adverse action decision-making process; the employment action is relatively less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and either a.1(a) or a.1(b) above is cited, or other unique escalating factors are present.

4. A lower level plant manager (or equivalent) or supervisor (or equivalent) is the decision-maker, or plays a significant role in the adverse action decision-making process; the employment action is relatively more adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., suspension without pay); and either a.1(a) or a.1(b) above is cited, or other unique escalating factors are present.

c. SL III violations involve, for example, the following:

1. A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decision-maker, or plays a significant role in the adverse action decision-making process; the employment action is relatively less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and no escalating factor is present.

2. A lower level plant manager (or equivalent) or supervisor (or equivalent) is the decision-maker, or plays a significant role in the adverse action decision-making process; the employment action is relatively more adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., suspension without pay); and no escalating factor is present.

3. A lower level plant manager (or equivalent) or supervisor (or equivalent) is the decision-maker, or plays a significant role in the adverse action decision-making process; the employment action is relatively less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and either a.1(a) or a.1(b) above is cited, or other unique escalating factor(s) are present.

d. SL IV violations involve, for example, the following:

1. A lower level plant manager (or equivalent) or supervisor (or equivalent) is the decision-maker, or plays a significant role in the adverse action decision-making process; the employment action is relatively less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and no escalating factor is present.

6.11 Reactor, Independent Spent Fuel Storage Installation, Fuel Facility, and Special Nuclear Material Security

a. SL I violations involve, for example, the following:

1. A theft, diversion, or act of sabotage occurs that involves a formula quantity of special nuclear material (SNM), or spent nuclear fuel or a very significant quantity of other radioactive material that could have substantial impact on the public.

2. Any failure of a licensee's security program as outlined in its security plan or insider mitigation program, results in an act of sabotage against one or more target sets or target set elements.

b. SL II violations involve, for example, the following:

1. An act of radiological sabotage results in the loss or destruction of a quantity of SNM of moderate strategic significance or a quantity of other radioactive material determined by the NRC to be equally or similarly significant.

2. A theft, diversion, or act of radiological sabotage takes place involving a quantity of SNM of moderate strategic significance or a quantity of other radioactive

material determined by the NRC to be equally or similarly significant, in which one or more attributes of the security program did not function as required.

3. A licensee fails to involve its reviewing official in developing an unescorted access authorization determination or determination of fitness for duty, following a for-cause action by the licensee that results in an individual's voluntary or involuntary loss of employment.

4. A licensee fails to maintain the high assurance standard of 10 CFR 73.20, "General performance objective and requirements," or 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage."

c. SL III violations involve, for example, the following:

1. An insider (e.g., licensee employee, licensee contractor or subcontractor) attempts an act of radiological sabotage to any radiological material.

2. The security or insider mitigation program has a failure, but the failure does not amount to an SL I or II violation that challenges the high assurance standard of 10 CFR 73.20, or 10 CFR 73.55.

3. A licensee fails to develop and maintain records concerning denials of access, or fails to respond to inquiries concerning denials of access, so that, as a result of the failure, a person previously denied unescorted access or unescorted access authorization is improperly granted such access.

4. A licensee fails to ensure that a licensee-approved contractor or vendor access authorization program is operating in accordance with regulatory and licensee requirements.

5. A licensee fails to complete one or more of the requirements of its access authorization program before granting an individual unescorted access or unescorted access authorization.

6. An individual who has not been qualified in accordance with regulatory requirements is assigned to a job task related to implementing the licensee's protective strategy.

7. A reviewing official relies on deliberately falsified information to make an unescorted access or unescorted access authorization determination.

8. The safeguards or security systems designed or used to prevent, detect, assess, or respond to the theft, loss, or diversion of strategic SNM, or significant quantities of other radioactive material, experiences a significant failure.

9. A licensee fails to conduct a search or conducts an inadequate search at any protected area access control point, and this failure results in the introduction of

firearms, explosives, or incendiary devices or reasonable facsimiles thereof that could be used in radiological sabotage or theft or diversion of strategic SNM.

d. SL IV violations involve, for example, the following:

1. A failure of a licensee's security or insider mitigation program, as outlined in the licensee's security plan, results in an attempted act of radiological sabotage against one or more target set elements.

2. A loss of SNM of low strategic significance or of less significant quantities of other radioactive material was not detected within the time period specified in the security plan, other relevant document, or regulation.

3. A licensee fails to comply with an element of its material and accounting program, which leads to degradation of a fuel cycle facility procedure related to adequate detection or protection against loss, theft, or diversion of SNM.

6.12 Materials Security

a. SL I violations involve, for example, the following:

1. The theft, diversion, or sabotage of a Category 1 quantity of radioactive material results from a failure to establish or implement one or more requirements, such as the following:

   (a) Failure to control unescorted access to a Category 1 quantity of radioactive material so that only individuals deemed trustworthy and reliable and having job duties that require unescorted access to the radioactive material are granted such access.

   (b) Failure to immediately respond (e.g., without undue delay in accordance with the licensee's prearranged plan) to an attempted theft, sabotage, or diversion of a Category 1 quantity of radioactive material, including requesting assistance from the local law enforcement agency.

   (c) Failure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material.

   (d) Failure to implement the Radioactive Material Quantities of Concern (RAMQC) requirements before shipping a consignment containing a Category 1 quantity of radioactive material.

b. SL II violations involve, for example, the following:

1. The theft, diversion, or sabotage of a Category 2 quantity of radioactive material results from the failure to establish or implement one or more increased control requirements, such as the following:

(a) Failure to control unescorted access to a Category 1 or Category 2[20] quantity of radioactive material so that only individuals deemed trustworthy and reliable and having job duties that require unescorted access to the radioactive material are granted such access.

(b) Failure to immediately respond (e.g., without undue delay in accordance with the licensee's prearranged plan) to an attempted theft, sabotage, or diversion of a Category 1 or Category 2 quantity of radioactive material, including requesting assistance from the local law enforcement agency.

(c) Shipping a consignment of a Category 2 quantity of radioactive material by a carrier, other than the licensee, without first verifying that the carrier uses a package tracking system, implements methods to ensure trustworthiness and reliability of drivers, maintains constant control and/or surveillance during transit, and has the capability for immediate communication to summon appropriate response or assistance.

(d) Failure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material.

(e) Failure to implement the RAMQC Additional Security Measures before shipping a consignment containing a Category 1 quantity of radioactive material.

(f) Failure to use a method to disable a vehicle or trailer, in or on which a Category 1 or Category 2 quantity of radioactive material is stored, when not under direct control and constant surveillance by the licensee.

c. SL III violations involve, for example, the following:

1. A licensee fails to immediately respond (e.g., without undue delay in accordance with the licensee's prearranged plan) to an attempted theft, sabotage, or diversion of a Category 1 or Category 2 quantity of radioactive material, including a failure to request assistance from the local law enforcement agency, but the failure does not result in actual theft, sabotage, or diversion of radioactive material.

2. A licensee fails to determine the trustworthiness and reliability of individuals having unescorted access to RAMQC and devices.

3. A licensee fails to verify that a carrier uses package tracking systems, implements methods that ensure trustworthiness and reliability of drivers, maintains constant control and/or surveillance during transit, and has the capability for immediate communication to summon appropriate response or

[20] Violation examples 6.12.b.1.(a), (b), and (f) recognize that a licensee may possess a total of either Category 1 or Category 2 quantity of radioactive material at the time of the subject incident, but only a Category 2 quantity was actually involved with theft, diversion, or sabotage. Hence, the severity level is determined by the category of material involved in the theft, diversion, or sabotage.

assistance, before shipping a Category 2 quantity of radioactive material, per consignment, by the carrier.

4. A licensee fails to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material.

5. A licensee fails to initiate an investigation to determine the location of a shipment of licensed material containing a Category 2 quantity of radioactive material when the shipment does not arrive on or about the expected arrival time.

6. A licensee fails to notify the NRC Operations Center promptly after initiating a response to any actual or attempted theft, diversion, or sabotage of sources or devices containing a Category 1 or Category 2 quantity of radioactive material.

7. A licensee fails to implement the RAMQC before shipping a Category 1 quantity of radioactive material, per consignment.

8. A licensee fails to use a method to disable a vehicle or trailer, in or on which a Category 1 or Category 2 quantity of radioactive material is stored, when not under direct control and constant surveillance by the licensee.

9. A licensee fails to contact the local law enforcement agency and does not attempt to establish a prearranged response plan with the local law enforcement agency, or a programmatic failure occurs in the implementation of the plan.

10. A licensee fails to establish a program to monitor and immediately detect, assess, and respond to unauthorized access to a Category 1 or Category 2 quantity of radioactive material, or a programmatic failure occurs during implementation.

11. A licensee fails to have a dependable means to transmit information among the various components of the intrusion detection system or to summon the appropriate responder.

12. A licensee fails to verify that a recipient licensee is authorized to possess the material being transferred.

d. SL IV violations involve, for example, the following:

1. A licensee fails to document the basis for concluding that an individual was determined to be trustworthy and reliable for the purposes of granting unescorted access to a Category 1 or Category 2 quantity of radioactive material.

2. A licensee fails to perform a complete and adequate trustworthiness and reliability determination for an individual, in particular failing to obtain or consider information relevant to access approval, but the individual would likely have been granted unescorted access if the required information had been obtained or considered.

3. A licensee fails to limit approval for unescorted access to a Category 1 or Category 2 quantity of radioactive material to individuals with job duties requiring unescorted access.

4. A licensee fails to maintain a list of persons approved for unescorted access.

5. A licensee fails to confirm receipt of transferred/shipped radioactive material.

6. A licensee fails to document its prearranged plan with the local law enforcement agency or to update the prearranged plan when changes to the facility design or operation affect the potential vulnerability of sources.

7. An isolated failure occurs in the as-designed operation of the dependable means to transmit information between and among the various components of the intrusion detection system or to summon the appropriate responder. This is a violation if caused by a licensee failure in the design, construction, operation, or maintenance of the system. This example does not include isolated failures caused by means outside the licensee's control, such as service disruptions.

8. For a shipment of a Category 2 quantity of radioactive material, a licensee fails to contact the recipient or originator of a shipment to coordinate an expected arrival time.

9. An isolated failure occurs in implementing a portion of the licensee's program to monitor and immediately detect, assess, and respond to unauthorized access to a Category 1 or Category 2 quantity of licensed radioactive material, such that an opportunity exists for unauthorized and undetected access to the material, but the opportunity is not easy to exploit and is not likely to be exploitable.

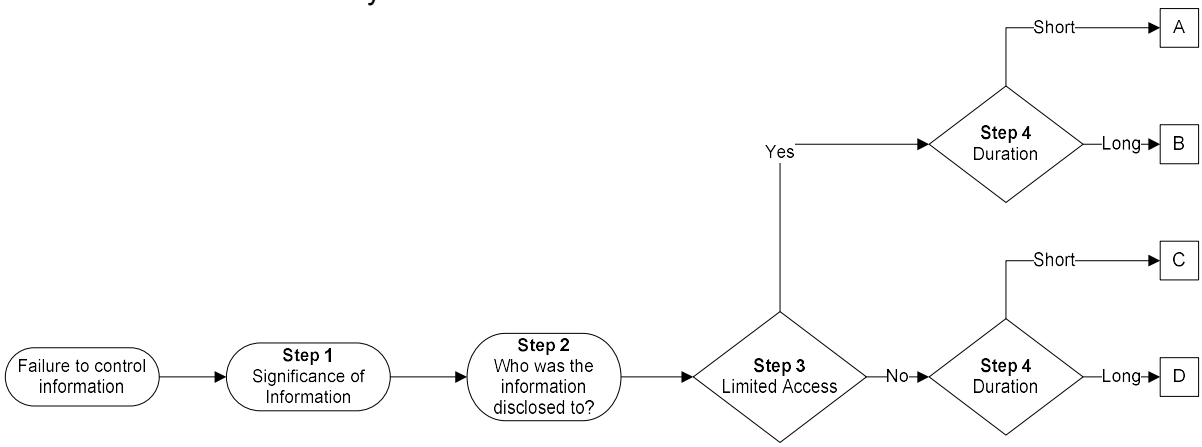
10. A licensee fails to comply with an element of its procedure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material, and this failure does not seriously degrade the enhanced monitoring capability.

6.13 Information Security

This section applies to information that is classified as SECRET or CONFIDENTIAL (National Security or Restricted Data), information that is designated safeguards in accordance with the AEA, and information requiring protection under 10 CFR Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material."[21] This approach is different from the approach used for traditional enforcement violation examples: a flow chart and table, along with defined terms, are used to determine the potential severity of a violation.

[21] The violation examples in the Policy, including the risk-informed examples provided in this section, are neither exhaustive nor controlling for making severity level determinations. Although not expressly referenced in the examples provided in this section, the Policy is applicable to information security violations involving information that is classified as TOP SECRET.

Once a noncompliance is identified, a four-step approach will be applied to determine the severity level of the violation. The four steps are: (1) based upon the provided criteria and the consideration of the totality of the information disclosed determine whether the event should be quantified as high significance, moderate significance, or low significance and (2) determine the extent of the disclosure. Upon completion of steps 1 and 2, determine the options at the intersection of the significance row and the disclosure column. Next, in step (3) determine the accessibility of the information by following the flow chart answering "Yes" or "No" to whether there was limited access to the information, and (4) determine the duration of the noncompliance by answering "Short" or "Long" to find the designated letter, A, B, C, or D. Next use this letter within the previously determined intersection point from the conclusion of steps 1 and 2 to determine the severity level.



Step 2 Disclosure		Disclosed to an individual deemed Trustworthy and Reliable				Unknown Disclosure				Confirmed to an Unauthorized Individual			
		A	B	C	D	A	B	C	D	A	B	C	D
Step 1 Significance	High	SL III	SL III	SL III	SL II	SL III	SL II	SL II	SL II	SL II	SL II	SL II	SL I
	Moderate	SL IV	SL III	SL III	SL III	SL IV	SL III	SL III	SL III	SL III	SL III	SL III	SL I
	Low	SL IV	SL IV	SL IV	SL III	SL IV	SL IV	SL IV	SL III	SL III	SL III	SL III	SL II

Step 1: Significance[22]–Describes the decision point to determine the significance of the disclosure as it relates to national security and/or the common defense and security.

High significance: The totality of information disclosed provides a significant amount of information about a technology (i.e., key elements of a technology or system) or combinations of the following elements related to protective strategies: response strategy, target sets, physical security plan, contingency plan or integrated response plan. The information may be either SECRET or CONFIDENTIAL information (National Security or

22 The significance guidance in step 1 applies only within the context of the Policy and its application. The significance guidance is not intended to define the "harm" that an unauthorized disclosure of SECRET or CONFIDENTIAL information can reasonably be expected to cause, as that term is defined in Executive Order 13526, "Classified National Security Information." Nothing in section 6.13 of the Policy should be read to contradict the National Policy on classified information.

Restricted Data) or safeguards.

Moderate significance: The totality of information disclosed provides limited information that may be useful to an adversary about the technology information or physical security plan at a facility. The information may be either SECRET or CONFIDENTIAL information (National Security or Restricted Data), safeguards or information requiring protection under 10 CFR Part 37.

Low significance: The totality of information disclosed, taken by itself, would not help an adversary gain information about the technology or physical security plan at a facility. The information may be either SECRET or CONFIDENTIAL information (National Security or Restricted Data), safeguards, information requiring protection under 10 CFR Part 37.

Step 2: Disclosure–Describes the decision point to determine whether: (1) the information was accessible to any individual(s) via hard copy format or electronic (e.g., computers) form, (2) you can determine who the individual(s) are, and (3) those individual(s) would meet the definition of trustworthy and reliable (T&R).

Trustworthy and reliable: Characteristics of an individual who is considered dependable in judgment, character, and performance, so that disclosure of information to that individual does not constitute an unreasonable risk to public health and safety or the common defense and security. A determination of T&R for this purpose is based on the results of a background investigation or background check, in accordance with 10 CFR 37.5, "Definitions," or 10 CFR 73.2, "Definitions," respectively. To meet the T&R requirement, the individual must possess a T&R determination before the disclosure of the information, regardless of the "need to know" determination. (Note: In accordance with 10 CFR 73.21, "Protection of Safeguards Information: performance requirements," or 73.59, "Relief from fingerprinting, identification and criminal history record checks and other elements of background checks for designated categories of individuals," certain individuals are relieved from numerous elements of background checks.)

Unknown disclosure: An instance when controlled information has been secured, protected, or marked improperly but there is no evidence that anyone has accessed the information while it was improperly handled.

Confirmed: An instance where a person not authorized to access controlled information gains access to the information.

Electronic media/confirmed: For electronic media, access to the information is considered confirmed once the information is no longer on an approved network for that type of information.

Unauthorized individual: A person who does not possess a T&R determination and a need to know.

Step 3: Limited Access–The descision point to determine the number of controls (e.g., doors, locks, barriers, firewalls, encryption levels) needed to enter or gain access to an area or computer system to obtain the disclosed security information.

Hard copy format: A location provides limited access if it meets all of the following conditions:

a. The area was locked or had access control measures.
b. Individuals that frequented the area were part of a known population.
c. Records of personnel entry to the area were maintained through key control or key card access.

Electronic media: A computer network provides limited access if it meets both of the following conditions:

a. The information is stored in a location that is within the the firewall of the licensee's computer network.
b. The licensee has some type of control system in place that delineates who can access the information.

Step 4: Duration–Describes the decision point in which a time period determination is made regarding the number of days the information was not controlled properly in accordance with the respective handling and storage requirements of the security information.

Long: Greater than or equal to 14 days from the date of the infraction to discovery of the noncompliance.

Short: Less than 14 days from the date of the infraction to discovery of the noncompliance.

6.14 Fitness for Duty[23]

a. SL I violations involve, for example, the following:

1. A licensee fails to substantially implement or substantially maintain reasonable assurance of FFD program performance in two or more subparts of 10 CFR Part 26.

b. SL II violations involve, for example, the following:

1. A licensee fails to withdraw the unescorted access authorization of an individual who has been involved in the sale, use, or possession of illegal drugs within the protected area; or a licensee fails to take action in the case of an on-duty misuse of alcohol, illegal drugs, prescription drugs, or over-the-counter medications; or, having identified an individual who appears to be impaired or have questionable fitness, a licensee fails to take immediate action to prevent the individual from performing the duties that require them to be subject to 10 CFR Part 26.

2. A licensee fails to take action to meet a regulation or a requirement of the licensee behavior observation program when observed behavior within the protected area or credible information about an individual's activities indicates

[23] See section 6.4 for examples of FFD violations specific to licensed operators.

impairment by any substance, legal or illegal, or mental or physical impairment from any cause, that adversely affects the individual's ability to perform their duties safely and competently.

c. SL III violations involve, for example, the following:

1. A licensee fails to take the required action for a person who has violated the licensee's FFD policy, in cases that do not amount to an SL II violation.

2. A licensee fails to ensure that a licensee-approved contractor's or vendor's FFD program is operating in accordance with regulatory and licensee requirements.

3. A licensee fails to complete or maintain more than one of the requirements of a program for individuals listed in 10 CFR 26.4, "FFD program applicability to categories of individuals."

4. A licensee fails to develop and maintain records concerning the denial of access, or to respond to inquiries concerning denials of access, so that, as a result of the failure, a person previously denied FFD authorization is improperly granted such access.

5. A licensee's employee assistance program staff becomes aware, but fails to notify licensee management that, based on information known at the time, an individual's condition may adversely affect the safety or security of the facility, however, the failure to notify does not result in a condition adverse to safety or security.

6. An individual covered by 10 CFR Part 26, Subpart I, "Managing Fatigue," was involved in a human error that caused or contributed to an actual event or to a potential degradation of plant safety, and at the time the error occurred, the individual was determined to be fatigued by means of a fatigue assessment as defined in 10 CFR 26.211, "Fatigue assessments."

d. SL IV violations involve, for example, the following:

1. A licensee fails to prepare, implement, and maintain written procedures that describe the methods to be used to implement the FFD policy.

2. A licensee fails to take an action required by its behavior observation program, in a case that does not amount to an SL I, II, or III violation.

3. A licensee fails to appropriately implement a requirement of 10 CFR Part 26, Subpart I (e.g., a requirement concerning work hours, waivers, self-declarations, or fatigue assessment), and the failure does not result in an actual event or a degradation of plant safety, but it is more than minor, in that it demonstrates a programmatic weakness or is not an isolated failure.

6.15 Export and Import Activities

Several of the following violation examples involve deliberateness or careless disregard. For those examples, the normal process for discretion to potentially escalate the severity level of the violation based on willfulness is not necessary.

a. SL I violations involve, for example, the following:

1. Deliberate misrepresentation of facts, with the knowledge of a licensee official, leads to the export of licensable and sensitive equipment or materials in quantities of concern to a destination that, if represented accurately, would not have been authorized by the NRC (or other authority).

2. Deliberate misrepresentation of facts leads to unauthorized individuals obtaining sensitive nuclear equipment or materials in quantities of concern.

b. SL II violations involve, for example, the following:

1. A licensee fails to provide notice of material imports under Appendix P, "Category 1 and 2 Radioactive Material," to 10 CFR Part 110, as required by 10 CFR 110.50, "Terms," such that, if notice had been provided, the NRC would have taken action to block the import.

2. Misrepresentation occurs, in careless disregard of requirements and with the knowledge of a licensee official, of facts about the export or import of radioactive or byproduct materials, such that if the facts had been provided completely and accurately, the NRC (or other authority) would not have authorized the export or import.

3. Inaccurate or incomplete information is provided or maintained that leads to the possession of radioactive materials by unauthorized individuals. If the information had been completely and accurately provided or maintained, the NRC would likely have terminated or denied a license, issued an order requiring suspension or cessation of licensed activity, or taken action to block an export or import, in order to protect public health and safety or the common defense and security.

c. SL III violations involve, for example, the following:

1. A licensee fails to submit timely notification of the import of material under 10 CFR Part 110, Appendix P, as required by 10 CFR 110.50. If it had done so, the NRC would likely have undertaken further action or inquiry (which could range from taking additional radiation measurements for a package exceeding radioactivity limits, to stopping a shipment destined for an unlicensed U.S. consignee).

2. Inaccurate or incomplete information is provided on exports or imports of radioactive or byproduct materials. If accurate and complete information had been provided, the NRC would likely have reconsidered the authorization of the activity, issued a request for additional information (RAI), or conducted an inspection to resolve the matter.

3. Byproduct material identified in 10 CFR Part 110, Appendix P, is exported to individuals or entities not authorized to receive such materials.

4. A licensee fails to obtain a specific license before the export or import of any NRC-licensable equipment, SNM, or source or byproduct materials, when required.

5. A licensee fails to obtain a specific license for an import, wherein the provisions of 10 CFR 110.27(a) were not met (i.e., the import was not authorized by a general license issued under 10 CFR Part 110).

6. A licensee fails to file an application for a specific license to export or import a shipment not authorized by a general or specific license issued under 10 CFR Part 110.

d. SL IV violations involve, for example, the following:

1. A licensee fails to submit timely reports as specified in 10 CFR 110.54, "Reporting requirements."

2. A licensee exports or imports nuclear equipment or materials in excess of the limits specified in a specific license or license amendment, when such activity would have been authorized by the NRC (or other authority).

3. Unauthorized export of foreign-obligated material or equipment takes place, in violation of 10 CFR 110.50(b)(3) requirements.

4. A licensee fails to seek required NRC approval before the implementation of less significant changes in licensed activities, such as either a change in ownership of the parent company of a licensee or change in ownership of a licensee, that does not impact importing or exporting activities.

5. A licensee fails to submit advance import notifications required by 10 CFR 110.50(c)(4) to the NRC Operations Center, but the notification would not have caused the NRC to undertake further action or inquiry.

6. A licensee fails to submit a copy of an authorization to confirm that a foreign recipient of nuclear material is authorized to receive and possess the material under the law and regulations of the importing country as per 110.50(c)(3)(H).

6.16 Independent Spent Fuel Storage Installations

a. SL I violations involve, for example, the following:

1. Because of a violation resulting in loss of fission product barriers (e.g., fuel cladding and confinement), a member of the public receives a radiation dose in excess of regulatory limits.

2. A violation results in significant contamination of the environment.

3. A violation results in an inadvertent criticality event.

b. SL II violations involve, for example, the following:

1. A violation that results in or could have resulted in loss of fission product barriers (e.g., fuel cladding or confinement).

2. A violation results in the loss of a system designed to prevent or mitigate a serious safety event.

3. A violation results in a significant loss of criticality margin.

c. SL III violations involve, for example, the following:

1. A significant failure to adequately evaluate a change to the facility or spent fuel storage cask design, as required by 10 CFR 72.48, “Changes, tests, and experiments,” results in implementation of the change without a required NRC license or certificate amendment.

2. A licensee fails to adequately oversee contractors as required by 10 CFR 72.154, “Control of purchased material, equipment, and services,” which results in the use of services or products important to safety that are significantly defective or of indeterminate quality.

3. A failure to have or follow documented instructions, procedures, or drawings as required by 10 CFR 72.150, “Instructions, procedures, and drawings,” results in a substantial potential for degradation of a fission product barrier.

4. A licensee fails to establish measures for the control of special processes as required by 10 CFR 72.158, “Control of special processes,” and significant actions are needed to correct the issue.

5. A violation (e.g., failure to comply with the certificate of compliance, the license, technical specifications, or 10 CFR 72.146, “Design control”; or a failure to perform adequate evaluations as required by 10 CFR 72.212, “Conditions of general license issued under § 72.210”) causes the degradation of a structure,

system, or component designed to prevent or mitigate a serious safety event.

d. SL IV violations involve, for example, the following:

1. A failure to comply with a technical specification action requirement demonstrates misapplication of the conventions in technical specifications Section 1.0, “Use and Application,” or the allowances for applicability of LCO and surveillance requirements in technical specifications section 3.0.

2. A failure to comply with a requirement in the certificate of compliance or the license results in conditions evaluated as having more than minor safety significance.

3. A violation of 10 CFR 72.48(d)(1) occurs, with significant revisions to the bases for the determination in the written evaluation of the change, test, or experiment that do not require a license amendment.

4. A less significant failure to adequately evaluate a change to the facility or spent fuel storage cask design, as required by 10 CFR 72.48, results in implementation of the change without a required NRC license or certificate amendment. The failure does not lead to an SL I, II, or III violation.

5. A licensee fails to perform adequate evaluations to ensure compliance with 10 CFR 72.212, and the resulting lack of up-to-date information is evaluated as having more than minor significance.

6. Under 10 CFR 72.146, a licensee fails to ensure that applicable regulatory requirements and the design basis are correctly translated into specifications, drawings, procedures, and instructions, resulting in conditions evaluated as having more than minor safety significance.

7. A failure to have or follow documented instructions, procedures, or drawings as required by 10 CFR 72.150, results in conditions evaluated as having more than minor safety significance.

8. A licensee fails to establish measures for the control of special processes as required by 10 CFR 72.158, and the failure does not require significant actions to correct.

9. Ineffective corrective actions associated with a system important to safety, as required by 10 CFR 72.172, “Corrective action,” result in conditions evaluated as having more than minor safety significance.

7.0 Glossary

This glossary, while not exhaustive, contains many of the terms commonly used in the NRC enforcement process.

Activity Area refers to the area of NRC-licensed activity that a licensee (or other person) engages in (e.g., radiography, reactor operations).

Actual Consequences include such effects as actual, exposures to workers or members of the public exceeding regulatory limits (e.g., those in 10 CFR 20.1201, "Occupational dose limits for adults," and 10 CFR 20.1301, "Dose limits for individual members of the public"), onsite or offsite releases of material exceeding regulatory or license limits, accidental criticality, core damage, loss of significant safety barriers, and loss of control of radioactive material.

Adverse Action is any action that may adversely affect an employee's compensation, terms, conditions, or privileges of employment including but not limited to failure to receive a routine annual pay increase or bonus; demotion or arbitrary downgrade of a position; transfer to a position that is recognized to have a lesser status or be less desirable (e.g., transfer from a supervisory to a nonsupervisory position); failure to be promoted; a downgrade in overall performance appraisal; or verbal or written counseling, or other forms of constructive discipline.

Alternative Dispute Resolution (ADR) refers to a variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures. Mediation and arbitration are the most widely recognized processes. The NRC's ADR program uses mediation rather than arbitration (i.e., the parties develop mutually agreeable corrective actions, rather than being bound by an arbitrator's decision).

Apparent Violation is a situation or circumstance that does not appear to meet NRC requirements and for which the NRC staff has not made a final enforcement determination.

Careless Disregard refers to situations in which an individual acts with reckless indifference to at least one of three things: (1) the existence of a requirement, (2) the meaning of a requirement, or (3) the applicability of a requirement. Careless disregard occurs when an individual is unsure of the existence of a requirement, the meaning of a requirement, or the applicability of a requirement to the situation, but nevertheless proceeds to engage in conduct that they know may cause a violation, without first ascertaining whether a violation would occur.

Certificate Holder is any person or entity to which the NRC has issued a certificate. Certificate holders include, but are not limited to, those issued certificates in accordance with the requirements of 10 CFR Part 32, 10 CFR Part 71, or 10 CFR Part 76. For the purposes of this Policy, where not addressed specifically, certificate holders are typically handled in the same way as licensees.

Civil Penalty is a monetary penalty that may be imposed for violations of (1) certain specified provisions of the AEA or supplementary NRC rules or orders, (2) any requirements for which a license may be revoked, or (3) reporting requirements under section 206 of the ERA.

Confirmatory Action Letter is a letter confirming the voluntary agreement of a licensee, contractor, or nonlicensee (subject to NRC jurisdiction) to take certain actions to mitigate specific concerns about health and safety, safeguards, or the environment.

Confirmatory Order is an order that confirms the commitments made by a licensee or individual to take certain actions. Before issuance of the confirmatory order, the licensee or individual and the NRC mutually agree on the terms of the order.

Contractor, as used in this Policy, refers to a vendor who supplies products or services to be used in an NRC-licensed facility or activity.

Corrective Action Program is a licensee's process for tracking, evaluating, and resolving deficiencies.

Deliberate Misconduct occurs when an individual voluntarily and intentionally (1) engages in conduct that they know to be contrary to a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, license applicant, or contractor or subcontractor of a licensee or license applicant, or (2) provides materially inaccurate or incomplete information to a licensee, license applicant, or contractor or subcontractor of a licensee or license applicant.

Demand for Information, as defined in 10 CFR 2.204, requires a licensee or other person subject to NRC jurisdiction to respond with specific information, to enable the NRC to determine whether to issue an order or take other action.

Discrimination, as described in 10 CFR 50.7 (or in similar provisions in 10 CFR Parts 30, 40, 52, 60, 61, 63, 70, 71, 72, and 76), is the taking of an adverse action against an employee because the employee engaged in certain protected activities.

Escalated Enforcement Actions include SL I, II, and III NOVs; NOVs associated with an inspection finding evaluated as having white, yellow, or red safety or security significance under the SDP; civil penalties; NOVs to individuals; orders to modify, suspend, or revoke NRC licenses or the authority to engage in NRC-licensed activities; and orders issued to impose civil penalties.

Event, as used in this Policy, means (1) an occurrence characterized by an active adverse impact on equipment or personnel, readily detected by human observation or instrumentation, or (2) a radiological impact on personnel or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above NRC limits, or a loss of radioactive material. For example, an equipment failure discovered through a spill of liquid, a loud noise, the failure of a system to respond properly, or an annunciator alarm would be considered an event; a system discovered to be inoperable through a document review would not. Similarly, if a licensee discovers, through quarterly dosimetry readings, that employees have been inadequately monitored for radiation, the issue will normally be considered licensee-identified; however, if the same dosimetry readings disclose an overexposure, the issue will be considered an event.

Fuel Cycle is the series of steps involved in supplying fuel for nuclear power reactors. It can include mining, milling, isotopic enrichment, fabrication of fuel elements, use in a reactor, chemical reprocessing to recover the fissionable material remaining in the spent fuel, reenrichment of the fuel material, refabrication into new fuel elements, waste disposal, storage, and transportation.

Impacts the NRC's Ability to Perform Its Regulatory Function refers to a situation that prevents the NRC from using appropriate regulatory tools to address a noncompliance because the agency is unaware that the noncompliance exists (e.g., provision of inaccurate and incomplete information or failure to submit a required report).

Inspection Finding is defined by the ROP and cROP. ~~As used in this Policy~~In sum, an inspection finding is a more-than-minor licensee failure to satisfy one or more ~~regulatory~~ requirement~~s~~ or ~~self-imposed~~ standard~~s~~, where such failure was reasonably foreseeable and preventable.

Interim Enforcement Policies (IEPs) are policies developed by the NRC staff and approved by the Commission for specific topics, typically for a finite period. Generally, IEPs grant the staff permission to refrain from taking enforcement action for generic issues that are not currently addressed in the Policy. IEPs are typically effective until formal guidance is developed and implemented, or the generic issue is otherwise resolved. IEPs can be found in section 9.0 of the Policy.

Isolated refers to a violation or failure that was an anomaly relative to otherwise adequate licensee implementation, and where there is evidence that the licensee typically implements the regulated program correctly.

License Applicant, as used in this statement of policy, means any person who submits an application for review.

Licensee is any person or entity authorized to conduct activities under a license issued by the NRC. Licensees include, but are not limited to, facilities licensed under 10 CFR Parts 30–36, 39, 40, 50, 52, 60, 61, 63, 70, or 72. However, in most cases in the Policy the term is applied broadly to refer to any or all of the entities listed in section 1.2, "Applicability."

Licensee Official, as used in this statement of policy, in general, means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, the NRC will consider the individual's responsibilities relative to the oversight of licensed activities and the use of licensed material.

Licensed Operator, as used in this Policy, includes NRC-licensed reactor operators and NRC-licensed senior reactor operators.

Lost Source Policy is the NRC's policy that a civil penalty may be issued for violations involving regulated material that was out of the licensee's control, regardless of the use, license type, quantity, or type of regulated material (e.g., loss, abandonment, improper transfer, or improper disposal of regulated material).

Minor Violation is a violation that is less significant than an SL IV violation. Minor violations do not warrant enforcement action and are not normally documented in inspection reports. However, they must be corrected.

Noncited Violation is a nonrecurring, typically nonwillful, SL IV violation or a violation associated with a green ROP or cROP finding that is not subject to formal enforcement action if one of the following applies: (1) for a reactor licensee, the licensee places the violation in a corrective action program to prevent recurrence and restores compliance within a reasonable period of time, and (2) for any other type of licensee, the licensee corrects or commits to correcting the violation within a reasonable period of time.

Nonescalated Enforcement Actions include NOVs that are dispositioned by the NRC as SL IV or minor violations.

Nonlicensee includes, but is not limited to, applicants, contractors, subcontractors, and vendors.

Notice of Deviation is a written notice describing a licensee's failure to satisfy a commitment that has not been made a legally binding requirement. A notice of deviation requests that a licensee provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

Notice of Nonconformance is a written notice describing the failure of a licensee's contractor to meet commitments that have not been made legally binding requirements by the NRC (e.g., a commitment made in a procurement contract with a licensee or applicant as required by 10 CFR Part 50, Appendix B). If the contractor deliberately fails to meet the terms of a procurement contract, the NRC may issue a violation under the Deliberate Misconduct Rule in accordance with 10 CFR 50.5. Notices of nonconformance request that nonlicensees provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement (see 10 CFR 2.201).

Order is used to modify, suspend, or revoke a license, or to take other action against a licensee or other person subject to the jurisdiction of the Commission (see 10 CFR 2.202).

Potential Safety or Security Consequences include potential outcomes based on realistic and credible scenarios (i.e., the staff considers the likelihood that safety or security could have been negatively affected in these scenarios).

- Substantial potential consequences–a realistic likelihood of exceeding a regulatory limit (including the dose limits in 10 CFR Part 20), typically demonstrated by cases exhibiting concrete, tangible outcomes that did not exceed a regulatory limit, but were definable, and in which it was only because of fortuitous circumstances that the limit was not exceeded (meaning typically all barriers, whether design or procedural, have failed). The

concern is not whether the relative limit was exceeded, but whether the licensee maintained adequate controls over the situation to avoid exceeding a limit.

- Potential consequences–a realistic likelihood of safety or security consequences, typically demonstrated in scenarios where most, or all barriers to a safety or security consequence were absent, but only a limited tangible outcome was possible.

- Low or relatively inappreciable consequences–credible scenarios where safety or security consequences could have occurred, but typically where at least one definable barrier, with a low likelihood of failure, remained to provide defense in depth.

Predecisional Enforcement Conference (PEC) is normally conducted with a licensee or individual before the NRC makes an enforcement decision when escalated enforcement action may warranted (i.e., for SL I, II, or III violations, civil penalties, or orders). The purpose of a PEC is to obtain information that will help the NRC determine the appropriate enforcement action, if any.

Programmatic refers to aspects of a program necessary to maintain safety and regulatory compliance. This includes the establishment of the necessary framework, procedures, and processes; verification that ~~they~~ the framework, procedures, and processes are adequate to perform their functions; and the provision of appropriate training, supervision, and oversight to ensure the implementation of activities in accordance with all procedures and policies.

Regulatory Conference is conducted with a reactor licensee to discuss the significance of findings evaluated through the SDP, with or without associated violations. These meetings focus on the safety significance of the issues and not necessarily on the corrective actions associated with the issues. Because the SDP significance assessment determines whether escalated enforcement action will be taken, a subsequent PEC is not normally necessary.

Requirement, as used in this Policy, means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

Repetitive Violation is one that could reasonably be expected to have been prevented by a licensee's corrective action for the same, or a similar, previous violation or a previous licensee finding that occurred within the past 2 years of the current violation, or that occurred within the period covered by the last 2 inspections, whichever period is longer.

Risk Information is used wherever possible to develop realistic and credible scenarios to use in assessing the safety significance of violations and assigning them severity levels.

Severity Levels are used (1) to indicate the significance of a violation assessed under traditional enforcement and (2) to determine the appropriate enforcement action to be taken.

Significance is a measure of actual or potential safety or security consequences and of impact on regulatory oversight; it may be escalated for willfulness. A noncompliance is assigned a severity level (I, II, III, or IV) using traditional enforcement in accordance with section 6.0 of this Policy, or is assessed using the SDP under the ROP or cROP and assigned a color (either green, white, yellow, or red, as described in section 2.2.3 of this Policy).

Traditional Enforcement, as used in this Policy, refers to the process for the disposition of violations of NRC requirements, including those that cannot be addressed only through the Operating Reactor Assessment Program. Traditional enforcement violations are assigned severity levels and include, but are not limited to, the following types of violations: (1) violations with actual safety and security consequences, (2) violations involving willfulness, (3) violations that impede the regulatory process, (4) discrimination, (5) violations not associated with ROP or cROP findings, (6) violations of materials regulations, and (7) deliberate violations committed by individuals.

Violation is a failure to comply with a requirement.

Willful violations include deliberate violations of NRC requirements, deliberate falsification of information, and careless disregard of NRC requirements or of the completeness and accuracy of information provided.

8.0 Table of Base Civil Penalties

TABLE A[24]

a.	Power reactors, gaseous diffusion uranium enrichment plants, and high-level waste repositories	$350,000
b.	Fuel fabricators authorized to possess Category I or II quantities of SNM and uranium conversion facilities	$175,000
c.	All other fuel fabricators, including facilities under construction, authorized to possess Category III quantities of SNM, industrial processors,[25] independent spent fuel and monitored retrievable storage installations, mills, and gas centrifuge and laser uranium enrichment facilities	$87,500
d.	Test reactors, contractors, waste disposal licensees, industrial radiographers, and other large material users	$35,000
e.	Research reactors, academic, medical, or other small material users[26]	$17,500
f.	Loss, abandonment, or improper transfer or disposal of regulated material, regardless of the use or type of licensee:	
	1. Sources or devices with a total activity greater than 3.7×10^4 MBq (1 curie), excluding hydrogen-3 (tritium)	$54,000
	2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i)	$17,000
	3. Sources and devices not otherwise described above	$8,750
g.	Individuals who release safeguards information	$8,750

NOTE: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), the civil penalty amounts apply to any penalties assessed on and after the date that the new amounts take effect; that is, civil penalties are based on the amounts in effect on the date of assessment, not on the date of the violation.

The maximum value in item a. of this table is calculated by rounding the maximum civil penalty amount specified in 10 CFR 2.205 down to the nearest multiple of $10,000. Although the 2015 Act does not mandate changes to the smaller civil penalty amounts, the other values have also been changed to maintain the same proportional relationships between the penalties.

The values in this table, except for item f, are adjusted based on the severity level of the violation utilizing the multipliers shown in table B. The base civil penalty amounts in item f are normally determined to be approximately 3 times the average cost of disposal; therefore, table B multipliers do not apply. For specific cases, the NRC may adjust these amounts to correspond to 3 times the estimated or actual cost of authorized disposal for the particular material in question. These values are adjusted periodically as necessary.

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[24] The NRC adjusts the amount specified in 10 CFR 2.205 on an annual basis, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The NRC may impose civil penalties in amounts greater than the values in this table (up to the statutory maximum) based on an increase to the amount specified in 10 CFR 2.205 as published in the *Federal Register*.

[25] Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

[26] This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physicians' offices.

TABLE B

Severity Level	Base Civil Penalty Amount (percent of amount listed in table A)
I	100%
II	80%
III	50%

9.0 Interim Enforcement Policies

9.1 Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

This section contains the IEP that the NRC will follow to exercise enforcement discretion for certain noncompliances with the requirements in 10 CFR 50.48, "Fire protection" (or with fire protection license conditions), that are identified as a result of a licensee's transition to the new risk-informed, performance-based fire protection approach included in 10 CFR 50.48(c), and for certain existing identified noncompliances that can reasonably be resolved through compliance with 10 CFR 50.48(c). Under 10 CFR 50.48(c), reactor licensees may voluntarily comply with the risk-informed, performance-based fire protection approaches in National Fire Protection Association Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants" (NFPA 805), 2001 Edition (with limited exceptions stated in the rule language).

Enforcement discretion may apply to noncompliances identified during the licensee transition process. The timeframe starts on the date specified in the licensee's letter of intent to transition to 10 CFR 50.48(c) and ends either (1) 3 years after that initial start date, or (2) on the date as specified in the licensee's commitment letter, as amended and approved by the NRC. If the licensee is unable to submit its LAR within the timeframe stated above, it will lose its enforcement discretion. However, licensees with appropriate justification and staff approval may regain enforcement discretion after submitting an acceptable[27] LAR. If enforcement discretion is not granted, any identified noncompliances may be subject to enforcement action.

Once an acceptable LAR is submitted, enforcement discretion for previously identified noncompliances[28] and any newly identified noncompliances discovered either by the licensee or the NRC while the LAR is under review will continue to be in place until the NRC dispositions the LAR.[29] If the NRC finds the LAR unacceptable but gives the licensee an opportunity to provide supplemental information, the enforcement discretion will continue while the licensee prepares the supplemental information, provided that it submits the information within the timeframe stipulated by the staff. If the NRC finds the amendment acceptable after receipt of the supplemental information, enforcement discretion will continue until the NRC dispositions the amendment. A licensee that submits an LAR that is not acceptably supplemented or an LAR that was initially characterized as unacceptable with no opportunity to provide supplemental information will lose its enforcement discretion. However, licensees with appropriate justification and NRC approval may regain enforcement discretion after submitting an acceptable LAR. If enforcement discretion is not granted, any identified noncompliances may be subject to enforcement action.

Once the NRC accepts an LAR for licensing review, the timeliness and quality of the responses to RAIs will significantly affect the LAR review schedule. Licensees whose responses to staff

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27 The agency will use the appropriate office instruction to evaluate the LAR for acceptability.

28 These are noncompliances that were previously granted enforcement discretion before submittal of the LAR.

29 Noncompliances that are identified during the LAR review process and that are determined to be either associated with a finding of high safety significance or willful will be considered for potential enforcement action.

RAIs are not timely or are not of high quality may lose enforcement discretion.

If, after submitting the letter of intent to comply with 10 CFR 50.48(c) and before submitting the LAR, a licensee decides not to complete the transition to 10 CFR 50.48(c), the licensee must submit a letter stating its intent to retain its existing licensing basis and withdrawing its letter of intent to comply with 10 CFR 50.48(c). After the licensee withdraws from the transition process, the NRC, as a matter of practice, will not take enforcement action against any noncompliance that the licensee corrected during the transition process and will, on a case-by-case basis, consider refraining from taking action if reasonable and timely corrective actions are in progress (e.g., the licensee has submitted an exemption request for NRC review). The NRC will disposition noncompliances that the licensee has not corrected, and noncompliances that were identified after the date of the withdrawal letter, in accordance with normal enforcement practices.

a. Noncompliances Identified during the Licensee's Transition Process

Under this IEP, the NRC will normally not take enforcement action for a violation of 10 CFR 50.48(b) (or the requirements in a fire protection license condition) involving a problem in an area such as engineering, design, implementing procedures, or installation if the violation is documented in an inspection report and meets all of the following criteria:

1. The licensee identified the violation as a result of a voluntary initiative to adopt the risk-informed, performance-based fire protection program under 10 CFR 50.48(c), or, if the NRC identified the violation, the NRC found it likely that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of its transition to 10 CFR 50.48(c).

2. The licensee corrected the violation or will correct the violation after completing its transition to 10 CFR 50.48(c). Also, the licensee took immediate corrective action, compensatory measures, or both within a reasonable time following identification, commensurate with the risk significance of the issue; this action should involve expanding the initiative, as necessary, to identify other issues caused by similar underlying causes.

3. Routine licensee efforts, such as normal surveillance or QA activities, were not likely to have previously identified the violation.

4. The violation was not willful.

The NRC may take enforcement action when the licensee has not met these conditions or when a violation associated with a finding of high safety significance is identified.

Although the NRC may exercise discretion for violations meeting the required criteria, if the licensee failed to make a required report to the agency, then the NRC will normally issue a separate enforcement action for the licensee's failure to make the required report.

b. Existing Identified Noncompliances

In addition, the licensee may have existing identified noncompliances that could reasonably be corrected under 10 CFR 50.48(c). For these noncompliances, the NRC will exercise enforcement discretion for the implementation of corrective actions until the licensee has made the transition to 10 CFR 50.48(c), provided that the noncompliances meet all of the following criteria:

1. The licensee has entered the noncompliance into its corrective action program and implemented appropriate compensatory measures.

2. The noncompliance is not associated with a finding that would be evaluated as red under the ROP SDP, and it would not be categorized as SL I.

3. The noncompliance was not willful.

4. The licensee submitted a letter of intent by December 31, 2005, stating its intent to transition to 10 CFR 50.48(c).

10.0 **Paperwork Reduction Act Statement and Public Protection Notification**

Paperwork Reduction Act Statement

This policy statement contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Included in this policy statement are mandatory and voluntary information collections approved by OMB approval numbers 3150-0002, 3150-0007, 3150-0008, 3150-0009, 3150-0010, 3150-0011, 3150-0013, 3150-0014, 3150-0016, 3150-0017, 3150-0018, 3150-0032, 3150-0035, 3150-0036, 3150-0104, 3150-0136, 3150-0146, 3150-0151, 3150-0158, and 3150-0195.

Send comments regarding ~~this burden estimate or~~ any ~~other~~ aspect of these information collections, including suggestions for reducing the burden, to the FOIA, Library, and Information Collections Branch (T-6 A10M), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by email to Infocollects.Resource@nrc.gov; or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs, Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street, NW, Washington, DC 20503; email: oira_submission@omb.eop.gov.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

[7590-01-P]

MJM edits

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC-2023-0xxx]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to policy statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing a revision to its Enforcement Policy (Policy) to incorporate multiple changes approved by the Commission.

DATES: This revision is effective on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The NRC is not soliciting comments on this revision to its Policy at this time.

ADDRESSES: Please refer to Docket ID NRC-2023-0xxx when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to https://www.regulations.gov and search for Docket ID NRC-2022-0205. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical

Commented [A1]: Staff should update this contact person, as appropriate.

questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at https://www.nrc.gov/reading-rm/adams.html. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to PDR.Resource@nrc.gov.
- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-287-9143, email: Gerald.Gulla@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

The mission of the NRC is to protect public health and safety and advance the nation's common defense and security by enabling the safe and secure use and deployment of civilian nuclear energy technologies and radioactive materials through efficient and reliable licensing, oversight, and regulation for the benefit of society and the

environmentlicense and regulate the Nation's civilian use of byproduct, source, and special nuclear material to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. The NRC supports this mission through its use of its Enforcement Policy (Policy). Adequate protection is presumptively assured by compliance with the NRC's regulations, and the Policy contains the basic procedures used to assess and disposition apparent violations of the NRC's requirements.

The NRC initially published the Policy in the *Federal Register* on October 7, 1980 (45 FR 66754). Since its initial publication, the Policy has been revised on a number of occasions to address changing requirements and lessons learned. The most recent Policy revision is dated January 13, 2023. That revision incorporated changes to the monetary amounts listed in Section 8.0, "Table of Base Civil Penalties." This revision meets the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Improvements Act), which requires Federal agencies to adjust their civil monetary penalties annually for inflation no later than January 15 of each year.

This current revision to the Policy is a staff initiative to incorporate lessons learned along with miscellaneous clarifications and additions. These revisions include clarifying and relocating the current Policy on lost or missing sources to a new separate section; removing the significance determination process qualitative color descriptions; revising guidance on miscellaneous actions involving individuals; adding a new section for independent spent fuel storage installations; revising several severity level violation examples, including examples for import/export activities, licensed reactor operators, materials operations, and fuel cycle operations; and sunsetting Interim Enforcement Policy 9.2, "Enforcement Discretion for Permanent Implant Brachytherapy Medical Event Reporting (10 CFR 35.3045)," for permanent implant brachytherapy medical reporting

requirements.

The NRC provided an opportunity for the public to comment on these Policy revisions in a document published in the *Federal Register* on December 3, 2020, (85 FR 78046). The NRC received multiple comments from Enercon Talisman, the Nuclear Energy Institute, and Louisiana Energy Services, LLC. These comments and the disposition of them are included in enclosure 1. The revision to the Policy and enclosures is available in ADAMS under Accession Numbers:

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

II. Paperwork Reduction Act Statement

This policy statement does not contain any new or amended collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). Existing collections of information were approved by the Office of Management and Budget (OMB), approval numbers 3150-0010 and 3150-0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has determined that it is not a "major rule" as defined by the Congressional Review Act.

Dated: Month, day, year

For the Nuclear Regulatory Commission.

~~Daniel H. Dorman~~Michael F. King,
Acting Executive Director for Operations.