

The Commissioners

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May 30, 1999

SECY-990-146

FOR: The Commissioners

FROM: William D. Travers /s/
Executive Director for Operations

SUBJECT: INTERIM ENFORCEMENT POLICY FOR USE DURING THE NRC
POWER REACTOR OVERSIGHT PROCESS PILOT PLANT STUDY

PURPOSE:

To request Commission approval to publish the attached *Federal Register* Notice on the proposed changes to NUREG-1600, Rev 1, "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy). These changes would be interim changes during the pilot plant study of the new NRC power reactor oversight process currently scheduled to begin in June 1999.

BACKGROUND:

SECY-99-007A, "Recommendations for Reactor Oversight Process Improvements," currently before the Commission, presents a pilot plant study for implementing the new reactor oversight process. An enforcement strategy was presented in that paper. The attached *Federal Register* Notice provides the necessary changes to the Enforcement Policy to implement the strategy presented in SECY-99-007A.

DISCUSSION

In the interest of being prepared to promptly publish revisions to the Enforcement Policy following Commission approval of SECY 99-007A, the staff is submitting the proposed revision to the Enforcement Policy rather than waiting completion of the Commission's deliberation on the SECY paper. The changes to the Enforcement Policy will be effective on the date of the implementation of the pilot plant study. Comments received will be considered as the staff evaluates lessons learned from the pilot plant study.

RECOMMENDATION:

That the Commission approves publication of the attached *Federal Register* Notice.

COORDINATION:

The Office of the General Counsel has no legal objection to this action.

William D. Travers

The Commissioners

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Executive Director for Operations

Attachment: Federal Register Notice - Policy and Procedure for NRC Enforcement Actions;
Interim Enforcement Policy for Use During the NRC Power Reactor Oversight
Process Pilot Plant Study

Attachment

NUCLEAR REGULATORY COMMISSION

[NUREG - 1600, Rev.1]

Policy and Procedure for NRC Enforcement Actions; Interim Enforcement Policy for Use During the NRC Power Reactor Oversight Process Pilot Plant Study.

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: Amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, Rev.1, by adding Appendix F to the policy. This amendment revises the treatment of violations of 10 CFR Part 50 and associated license conditions during the pilot plant study of the new NRC power reactor oversight process. The Commission is applying this new oversight process to the nine reactor sites that are part of a pilot plant study scheduled to begin in June 1999.

DATES: This amendment becomes effective on (the implementation date of the pilot plant study). Comments on this amendment should be submitted by (30 days of its publication in the *Federal Register*) and will be considered by the NRC as it evaluates lessons learned from the pilot plant study.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555

Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, (301) 415-2741.

SUPPLEMENTARY INFORMATION:

As described in NUREG-1600, Revision 1, "General Statement of Policy and Procedures for NRC Enforcement Actions," the purpose of the Commission's current enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. The Enforcement Policy provides that prompt and vigorous enforcement action should be taken when dealing with licensees, contractors, and their employees who did not achieve the necessary attention to detail and did not achieve the high standards of compliance that the Commission expects. Enforcement actions have been used as a deterrent to emphasize the importance of compliance with requirements and to encourage prompt identification and prompt, comprehensive correction of violations.

The current Enforcement Policy has been successful in focusing attention on compliance issues to improve safety. The process uses enforcement to (1) assess the safety significance of individual inspection findings and events, (2) formulate the appropriate agency response to these findings and events, (3) emphasize good performance and compliance, (4)

provide incentives for performance improvement, and (5) provide public notification of the Commission's views on licensees' performance and actions. The Commission has made substantial changes to the Enforcement Policy since 1980. However, the Commission has continued to employ a basic theory of using sanctions, including the use of civil penalties, to deter noncompliance. Escalated enforcement actions have provided regulatory messages to encourage improved licensee performance. However, the Commission has not always integrated decision making in the performance assessment program with the enforcement program. This has resulted in mixed regulatory messages regarding performance and approaches to improve it. Further, the enforcement process has been criticized as being difficult to understand, subjective, inconsistent, unpredictable, and not being sufficiently risk-informed. Licensee's have indicated that this has resulted in setting high priorities for issues of low risk significance at the expense of more risk-significant items.

The Commission has developed a new reactor oversight process and is applying it to nine reactor sites as part of a pilot plant study scheduled to begin in June 1999. The new reactor oversight process which includes a structured performance assessment process and evaluates the significance of individual findings provides an opportunity to reconsider the existing Enforcement Policy. In considering a new approach to enforcement, the Commission is not suggesting that the existing policy which used civil penalties has not served the agency or is ineffective. However, an opportunity to better integrate the enforcement policy and the reactor oversight process exists due to the new oversight process, a greater agency focus on risk and performance, and the overall improved industry performance. Based on the following, the new assessment process and the current Enforcement Policy provides similar functions:

- Both the current enforcement and the new oversight processes result in formulating agency responses to violations and performance issues. The enforcement process uses sanctions such as citations and penalties. Both use actions such as meetings to discuss performance, 10CFR50.54(f) letters, Demands for Information, Confirmatory Action Letters, and Orders as agency responses.
- They evaluate individual compliance findings for significance under each process.
- Both processes provide incentives to improve performance, compliance and deterrence since licensees normally strive to avoid regulatory actions and enforcement sanctions.
- Both approaches give the public the Commission's views on the status of licensee's performance and compliance.

Given the similarities in the purpose of the two programs, the goal was not to continue having two separate and independent processes. The interim Enforcement Policy will complement the assessment program by focusing on individual violations. The Agency Action Matrix¹ will dictate the Commission's response to declining performance whether caused by violations or other concerns. The result will be a unified agency approach for determining and responding to performance issues of a licensee that (a) maintains a focus on safety and compliance, (b) is more consistent with predictable results, (c) is more effective and efficient, (d) is easily understandable, and (e) decreases unnecessary regulatory burden. In most cases,

¹The Agency Action Matrix as described in SECY-99-007, "Recommendations for Reactor Oversight Process Improvements," provides guidance for consistent agency action in response to licensee performance. These actions are graded across the range of licensee performance and are triggered by threshold assessments of the performance indicators and inspection findings.

this approach should provide similar deterrence to that provided by issuing civil penalties. Having a more consistent approach should also promote public confidence in the regulatory process.

To ensure a consistent approach between enforcement and assessment, the agency will use one method for categorizing the risk significance of findings involving violations. The new assessment process will use a Significance Determination Process (SDP) to characterize inspection findings based on their risk significance and performance impact. The SDP will assign a color band of green, white, yellow, or red to each violation (or plant issue) to reflect its significance. To support a unified approach to significance, the Enforcement Policy will use the results of the SDP, where applicable, to disposition violations.

The enforcement approach for the pilot program divides violations into two groups. The first group is those violations that the SDP can evaluate, where the Agency Action Matrix will determine appropriate action. The second group is those violations associated with actual consequences, violations that the SDP does not evaluate, such as willful violations, and those that may impact the regulatory process for oversight of reactors.

I. Violations Evaluated by the Significance Determination Process

The first group is those violations that the SDP evaluates, where the Agency Action Matrix will determine appropriate action. Violations will be either cited or non cited. Normally, severity levels and civil penalties will not be used.

A. Violations of Low Significance

Violations that the SDP has evaluated as of low significance (i.e., green) will be information for the assessment process and considered within the licensee response band according to the Agency Action Matrix. These violations will be documented in inspection reports as Non-Cited Violations (NCVs). However, a Notice of Violation (NOV) will be issued for the following three exceptions:

- (1) the licensee fails to restore compliance within a reasonable time after identification of the violation,
- (2) the licensee fails to place the violation into the corrective action program, or
- (3) the violation was willful. An NCV may be appropriate if the violation meets the criteria in Section VII.B.1. (d) of the Enforcement Policy which addresses the exercise of enforcement discretion for certain willful violations.

The guidance of Appendix C: Interim Enforcement Policy for Severity Level IV Violations Involving Activities of Power Reactor Licensees, 26 FR 6388 (February 9, 1999), is applicable to these three exceptions.

B. Significant Violations

Violations that the SDP evaluates as risk significant (i.e., white, yellow, or red) will be information for the assessment process and considered in the regulatory response band according to the Agency Action Matrix. Such violations, being risk significant, will result in issuing a formal NOV requiring a written response, unless sufficient information is already on the docket. The Agency Action Matrix and not the Enforcement Policy will guide the agency response, to determine root causes if warranted, and to emphasize the need to improve

performance for safety significant violations. The Agency Action Matrix will specify whether regulatory conferences and other actions will be taken if merited by the specific violations or overall licensee performance.

C. Particularly Significant Violations

Despite the process described above for enforcement decisions for violations addressed by the Agency Action Matrix, the Commission reserves the use of discretion for particularly significant violations to assess civil penalties in accordance with Section 234 of the Atomic Energy Act of 1954, as amended. Based on the current performance of licensees, this discretion is expected to be exercised rarely. An example where such discretion may be considered would be for Severity Level I violations under the existing Enforcement Policy, e.g., an accidental criticality categorized in Appendix B, Supplement I, Reactor Operations.

II. Violations Not Evaluated by the SDP and those Having Actual Consequences

The current Enforcement Policy will be applied for the second group of violations. This includes the use of severity levels to characterize the significance of violations and the use of civil penalties or other appropriate enforcement action. Three categories of violations are within this group:

(A) Violations that involve willfulness including discrimination;

(B) Violations that may impact the NRC's ability for oversight of licensee activities, such as those associated with reporting requirements, failure to obtain NRC approvals, such as required

by 10 CFR 50.59, 10 CFR 50.54(a), 10 CFR 50.54 (p), and failure to provide the NRC with complete and accurate information or to maintain complete and accurate records ; and

(C) Violations that involve actual consequences. These violations include an overexposure to the public or plant personnel, the failure to make the required notifications that impact the ability of federal, state and local agencies to respond to an actual emergency preparedness or transportation event, or a substantial release of radioactive material.

The Commission recognizes that violations in subgroups(A) and (C), above, may have also been evaluated by the SDP and the Agency Action Matrix. However, the Commission considers that the use of the current Enforcement Policy is appropriate, including severity levels and civil penalties, to provide additional deterrence for violations in this category. The guidance in Appendix C: Interim Enforcement Policy for Severity Level IV Violations Involving Activities of Power Reactor Licensees, will be applicable to Severity Level IV violations in this group.

Paperwork Reduction Act

This final policy statement does not amend information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150-0136.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not "a major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, adding Appendix F amends the NRC Enforcement Policy as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

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Appendix F: Interim Enforcement Policy for Use During the NRC Power Reactor Oversight Process Pilot Plant Study

The Commission is issuing this Appendix to revise the Policy and Procedure for NRC Enforcement Actions (Enforcement Policy) NUREG 1600, Rev. 1. The Appendix affects violations of the requirements of 10 CFR Part 50 and associated license conditions at nine power reactor sites participating in the NRC reactor oversight process pilot plant study beginning in June 1999. The Commission is issuing as an appendix to the Enforcement Policy and characterizing this policy amendment as interim because the Commission may make additional changes to the Enforcement Policy following a review of the results from the pilot

plant study. Then, assuming an acceptable outcome from the pilot plant study, the Enforcement Policy for all power reactors will be changed. This Appendix revises the NRC's Enforcement Policy for the plants participating in the pilot plant study by dividing identified violations into two groups.

I. Violations Evaluated by the Significance Determination Process

The first group is those violations that the Reactor Oversight Program's Significance Determination Process (SDP) can evaluate. For these violations, the SDP will determine the significance of the violation and the Agency Action Matrix will determine the appropriate agency response. These violations will be cited or non cited. Normally, no severity levels and civil penalties will be used to characterize these violations.

A. Violations of Low Significance

Violations that the SDP evaluates as not being risk significant (i.e., green) will be described in inspection reports as Non Cited Violation (NCVs) and be categorized by the assessment process within the licensee response band. However, a Notice of Violation (NOV) will be issued if any one of three circumstances exists. Specifically,

- (1) the licensee fails to restore compliance within a reasonable time after they identified the violation,
- 2) the licensee fails to place the violation into the corrective action program, or
- (3) the violation was willful. An NCV may be appropriate if the violation meets the criteria in Section VII.B.1. (d) of the Enforcement Policy

The three exceptions are consistent with items (1), (2), and (4) of Appendix C: Interim Enforcement Policy for Severity Level IV Violations Involving Activities of Power Reactor Licensees, 26 Federal Register 6388 (February 9, 1999).

B. Significant Violations

Violations that the SDP evaluates as risk significant (i.e., white, yellow, or red) will be assigned a color band related to their significance for use by the assessment process. Because of being risk significant a NOV will be issued requiring a formal written response unless sufficient information is already on the docket.

C. Particularly Significant Violations

Despite the process described above for enforcement decisions for violations addressed by the Agency Action Matrix, the Commission reserves the use of discretion for particularly significant violations to assess civil penalties in accordance with Section 234 of the Atomic Energy Act of 1954, as amended. Based on current performance of licensees, this discretion is expected to be exercised rarely. An example where such discretion may be considered would be for Severity Level I violations under the existing Enforcement Policy, (e.g., an accidental criticality categorized in Appendix B, Supplement I, Reactor Operations.)

II. Violations Not Evaluated by the SDP and Those Having Actual Consequences

In the second group of violations, the Enforcement Policy will be retained, along with severity levels and the potential for the imposition of civil penalties or other appropriate enforcement action. Three categories of violations are within this group:

(A) Violations that involve willfulness including discrimination.

(B) Violations that may impact the NRC's ability for oversight of licensee activities such as those associated with reporting issues, failure to obtain NRC approvals such as for changes to the facility as required by 10 CFR 50.59, 10 CFR 50.54(a), 10 CFR 50.54 (p), and failure to provide the NRC with complete and accurate information or to maintain accurate records, and

(C) Violations that involve actual consequences such as an overexposure to the public or plant personnel, failure to make the required notifications that impact the ability of federal, state and local agencies to respond to an actual emergency preparedness or transportation event, or a substantial release of radioactive material.

To the extent the above does not modify the NRC Enforcement Policy, the Enforcement Policy remains applicable to power reactor licensees.

Dated at Rockville, Maryland, this ____ day of _____, {1999}.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

