

November 3, 1998

SECY-98-256

FOR: The Commissioners

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

SUBJECT: PROPOSED REVISION TO THE ENFORCEMENT POLICY TO  
ADDRESS SEVERITY LEVEL IV VIOLATIONS AT POWER REACTORS

Purpose:

To obtain the Commission's approval to revise the NRC Enforcement Policy such that most Severity Level IV violations at power reactors would be closed based on their being entered into a licensee's corrective action program, and normally would not result in a Notice of Violation (NOV).

Background:

Severity Level IV violations are defined in the Enforcement Policy as violations of more than minor concern which, if left uncorrected, could lead to a more serious concern. Violations at Severity Level IV, the least significant of the four severity levels established in the NRC Enforcement Policy, involve non-risk significant noncompliance with NRC requirements. NOVs are issued pursuant to 10 CFR 2.201, and normally require a written response within 30 days addressing: 1) the reason for the violation or basis for disputing the violation; 2) corrective steps that have been taken and results achieved; 3) corrective steps that will be taken to avoid further violations; and 4) the date when full compliance will be achieved. The policy provides that NOVs need not require a response if all of the necessary information is already available on the docket. The policy also permits certain licensee-identified Severity Level IV violations to be treated as non-cited violations (NCVs), but only if the licensee has committed to corrective actions by the end of the inspection, including corrective action to prevent recurrence.

In fiscal year (FY) 1997, power reactor licensees experienced a sharp increase in NOVs issued for Severity Level IV violations, from approximately 770 in FY 1996 to 1,400 in FY 1997. In FY 1998, approximately 1,300 Severity Level IV NOVs were issued. In a memorandum to the Commission dated July 31, 1998, the NRC staff attributed the increase, in part, to efforts to improve the quality and consistency of the inspection and enforcement programs and to

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increased emphasis on the nexus between safety and compliance, and not to a decline in the performance of power reactor licensees.

In response to concerns about this increase, and its apparent contradiction with the substantial performance improvements of operating power reactors in the last two decades, the staff initiated efforts to reconsider the treatment of non-risk significant violations (which, for the purposes of this paper, are synonymous with Severity Level IV violations). In an August 25, 1998, memorandum to the Chairman, the Executive Director for Operations submitted a plan which included the objective of maintaining the NRC's ability to identify licensee problems in a timely manner and reducing unnecessary licensee burden associated with responding to non-risk significant violations.

The approach to enforcement of Severity Level IV violations, including the requirement to provide a written response to cited violations (those subject to an NOV) has essentially been unchanged since before the 1979 accident at Three Mile Island. Since that time, by almost all indicators, the overall performance of reactor licensees has substantially improved. Licensees have generally developed effective corrective action programs that cover not only safety-related activities under 10 CFR Part 50, Appendix B, but usually other activities regulated by the NRC (e.g., fire protection and physical security). In fact, findings of the NRC are generally only a small percentage of the issues, including noncompliances, identified by licensees and addressed in corrective action programs.

From a safety perspective, NRC Severity Level IV findings generally are not the most important matters being addressed in a licensee's corrective action program. Consequently, in light of the requirement to develop a comprehensive corrective action plan to address recurrence and provide a response to the NRC within 30 days pursuant to 10 CFR 2.201, an NOV may result in licensee priorities and activities that are inconsistent with a violation's relative safety significance. Thus, the staff is concerned that NRC findings may drive licensee priorities in their corrective action programs, rather than having the fundamental safety significance of the issue establish its priority. Additionally, requiring formal responses to Severity Level IV violations, which are included in a licensee's corrective action program and are subject to NRC inspection, may in most cases be an unnecessary administrative burden.

As a preliminary step to addressing this concern, the Director of the Office of Enforcement issued Enforcement Guidance Memorandum 98-006, dated July 27, 1998, to emphasize the provisions in the current policy that permit certain licensee-identified Severity Level IV violations to be treated as non-cited violations (NCVs) and certain NOV's to be issued without requiring a written response. Preliminary data indicates that this guidance has resulted in a decrease in the number of cited NOV's and cited NOV's requiring a response. Notwithstanding the results of this initiative, licensees must still address Severity Level IV violations with a higher priority than may be justified by their safety significance. Licensee action is required to provide information to the NRC to support treatment of violations as NCV's, or to avoid having to provide a formal response to an NOV. The current policy also requires that NOV's be issued for Severity Level IV violations identified by NRC inspectors. Further changes to more comprehensively address the treatment of Severity Level IV violations, including those identified by the NRC, will require Commission-approved changes to the Enforcement Policy.

The staff's continuing reevaluation of the Enforcement Policy has resulted in the conclusion that

the policy can be made more risk-informed and that process efficiencies can be achieved without detracting from the NRC's emphasis on compliance or its ability to identify problems in their early stages. As discussed below, the recommendations in this paper have been shared with representatives of the licensed community, public interest groups and other stakeholders. In addition, these recommendations have been coordinated with NRC staff activities to develop improvements to the NRC's inspection and performance assessment programs in order to assure that these changes are not in conflict with the improvements that are being considered in these areas. The staff believes that the policy changes recommended below should be implemented prior to the completion of the various improvement efforts because of the near-term benefits to safety and improvements in the efficiency of the NRC's enforcement processes that are expected to be realized.

The staff notes that this paper addresses only power reactor licensees because of the scope, formality and general effectiveness of their corrective action programs and the extent of the NRC inspection effort associated with these facilities. However, the staff notes that the Office of Nuclear Materials Safety & Safeguards (NMSS) is working with the Office of Enforcement on the feasibility of expanding this revised enforcement approach to other categories of licensees in the future.

#### Discussion:

The NRC staff has reexamined agency policy and practices with respect to Severity Level IV violations at power reactors. This was carried out in recognition of the relatively low risk significance of these violations and the fact that most power reactor licensees generally enter such noncompliances into corrective action programs and appropriately resolve them in accordance with their safety significance.

Severity Level IV violations represent a small fraction of issues identified by licensees and included in licensee corrective action programs. The current Enforcement Policy approach has resulted in licensees placing a higher priority on these violations than their risk significance would merit. Accordingly, corrective action program issues with relatively higher risk significance may, by default, have been assigned lower priorities. Since individual Severity Level IV violations by definition do not involve risk-significant matters, the staff believes that there may be a benefit to safety if licensees are able to prioritize the resolution of Severity Level IV violations based on their safety significance. This can be accomplished if most Severity Level IV violations are closed by the NRC based on their being entered into a licensee's corrective action program. NOVs would be reserved for those cases where the NRC considers it important to obtain a description of the licensee's corrective actions on the docket. These changes would enhance the ability of licensees to address issues in their corrective action programs in accordance with their safety and risk significance, and would reduce unnecessary administrative burden associated with non-risk significant violations.

Therefore, the staff recommends that the Commission approve a revision to the Enforcement Policy for power reactor licensees. The revised policy would affect the treatment of individual Severity Level IV violations by: 1) expanding the use of NCVs to include Severity Level IV violations identified by the NRC; 2) providing that except under limited, defined circumstances, individual Severity Level IV violations will normally result in NCVs and not NOVs; and 3) permitting closure of most Severity Level IV violations based on their having been entered into

a licensee's corrective action program.

This revised enforcement approach is not intended to modify the NRC's emphasis on compliance with requirements. Severity Level IV violations would continue to be described in inspection reports as they are now, although the staff would close these violations based on their being entered into the licensee's corrective action program rather than a complete understanding of the licensee's corrective actions. At the time a violation would be closed in an inspection report, the licensee may not have completed its corrective actions or begun the process to identify the root cause and develop action to prevent recurrence. Licensee actions would be taken commensurate with the established priorities and processes of the licensee's corrective action program. The NRC inspection program will provide an assessment of the effectiveness of the corrective action program. In addition to documentation in inspection reports, violations would continue to be entered into the Plant Issues Matrix (PIM) that the NRC maintains for each facility to assist in identifying declining performance and determining repetitiveness. The revised approach would allow licensees to dispute violations described as NCVs.

The circumstances under which an NOV would be considered for a Severity Level IV violation and a brief discussion of each follows. Any one of these would result in consideration of an NOV requiring a formal written response from a licensee. The decision to issue an NOV would be based on the merits of the case.

1. *The licensee failed to restore compliance within a reasonable time after a violation was identified.*

The purpose of this exception is to emphasize the need to take appropriate action to restore compliance, or take compensatory measures if compliance cannot be immediately restored, once a licensee becomes aware of a violation.

2. *The licensee did not place the violation into a corrective action program to address recurrence.*

The purpose of this exception is to emphasize the need to consider actions beyond those necessary to restore compliance and which may be necessary to prevent recurrence.<sup>1</sup> Placing a violation into a corrective action program to prevent recurrence is fundamental to the NRC's ability to close out a violation in an inspection report without

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<sup>1</sup>NOVs require a written response and are issued pursuant to 10 CFR 2.201. NOVs require a response addressing, among other things, actions taken to avoid further violations, i.e., to prevent recurrence. This goes beyond the provisions of Criterion XVI of Appendix B to 10 CFR Part 50, applicable to safety-related components, which only requires that actions be taken to determine root causes and prevent recurrence for *significant conditions* adverse to quality. However, since at least 1975, NOVs have required licensees to address actions to prevent recurrence. The deterrence aspect of the Policy and the goal that licensees remain in compliance through comprehensive corrective action are consistent with Section 2.201 of the Commission's regulations and the language used in NOVs. Thus, non-significant conditions adverse to quality not amounting to noncompliance are subject to a lesser standard than compliance issues.

detailed information regarding the licensee's corrective actions. The licensee would be expected to provide the NRC with a file reference evidencing that the violation had been placed in the corrective action program. This will assist the NRC should it review the particular violation as part of an NRC inspection of the effectiveness of the licensee's corrective action program.

3. *The violation is repetitive as a result of inadequate corrective action, and was identified by the NRC.*

The purpose of this exception is to emphasize the importance of effective corrective action to prevent recurrence and the importance of licensees identifying recurring issues. For the purposes of this exception, the term "repetitive violation" is consistent with its definition in the Enforcement Policy, provided that the previous violation is one that was described in an NRC inspection report or otherwise described in docketed information. This exception would be used in those cases where: 1) corrective action for the previous violation had time to take effect and was deemed inadequate; or 2) corrective action for the previous violation wasn't taken in a time frame commensurate with its safety significance. An NOV would not result if, despite the violation's recurrence, the NRC found the licensee's corrective actions for the previous violation reasonable. In addition, this exception would be applied only to repetitive violations identified by the NRC so as to encourage licensee identification and correction of repetitive issues.<sup>2</sup> Licensees normally would be given credit for identifying repetitive violations which are self-disclosing, i.e., identified as the result of events.

4. *The violation was willful and is not subject to discretion pursuant to VII.B.1 of the Enforcement Policy.*

The purpose of this exception is to emphasize the importance of integrity and candor in carrying out licensed activities, as expressed in Section IV.C. of the Enforcement Policy. Nonetheless, certain licensee-identified willful violations (e.g., those involving the isolated acts of relatively low-level individuals, etc.) would remain eligible for treatment as NCVs, as they are under the current policy in Section VII.B.1. In addition, the staff notes that willfulness may result in increasing the severity level of a violation; the use of this exception refers only to those situations where the significance of the willfulness does not justify an increase to Severity Level III; if it did, escalated enforcement action would be considered.

In recommending a revised enforcement approach, the staff has not lost sight of the lessons of plants that have had ineffective corrective action programs resulting in deficient performance and, in some cases, extended shutdowns. Given the lower risk significance of Severity Level IV violations, the staff's inspection efforts should be focused on the overall effectiveness of the

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<sup>2</sup>Licensee-identified, non-willful repetitive violations would be cited only if the ineffectiveness of the licensee's corrective action program is significant enough to rise to Severity Level III. Before making a decision to issue such a Severity Level III violation, consideration would be given to additional inspection effort, issuance of Demands for Information, management meetings, predecisional enforcement conferences, and outcomes of performance assessments.

corrective action program and not on the licensee's actions taken for each such violation. The staff intends to utilize a "smart" sample of NRC and licensee-identified findings in reviewing the effectiveness of corrective action programs. The immediate changes necessary in the inspection program and associated training necessary to implement this approach are expected to be completed by the end of 1998.

As the Commission is aware, there are related, ongoing efforts to seek improvements in the NRC's inspection and performance assessment programs. The staff does not foresee anything proposed in this paper that will prejudice the outcome of the performance assessment process improvements, or that could not be accommodated by the new assessment process. For example, the use of exception 3 above concerning treatment of repetitive violations may be reconsidered based on the outcome of the assessment process. The policy changes being recommended will contribute to a more risk-informed regulatory process by allowing licensees to resolve Severity Level IV violations consistent with their risk significance, and have the added benefits of reducing unnecessary licensee burden associated with responding to violations identified by the NRC, and simplifying the NRC's internal decision-making process for Severity Level IV violations.

The staff recognizes that additional Enforcement Policy changes may be considered as a result of the improvements to the inspection and performance assessment processes. In addition, the staff is considering additional changes to the Enforcement Policy and guidance documents to address issues such as the use of the term "regulatory significance" in determining severity levels, and further clarifying the threshold between Severity Level IV and "minor" violations, which are not normally described in inspection reports.

#### Consideration of comments from NRC stakeholders

In developing this paper the staff considered comments of various external stakeholders. Consideration was given to written comments submitted in response to a May 13, 1998, revision to the Enforcement Policy, Congressional concerns, and information provided during several meetings with representatives of the industry and public interest groups. The main participants in these meetings were representatives of the Nuclear Energy Institute (NEI), various power reactor licensees, the Union of Concerned Scientists (UCS), and Public Citizen. The staff also met with representatives of the Federal Aviation Administration (FAA) to discuss comments made by NEI about certain aspects of the FAA's enforcement program.

Public Citizen generally does not favor making changes in the NRC's current Enforcement Policy for fear that NRC will lose its ability to detect performance problems at an early stage. However, the staff notes, as discussed above, that Severity Level IV violations would continue to be discussed in inspection reports and listed in Plant Issues Matrices to assist in identifying declining performance and determining repetitiveness. UCS is supportive of the changes being recommended, as discussed in the October 14, 1998, letter from David A. Lochbaum to the Commission, including the retention of narrative descriptions of Severity Level IV violations in reports. NEI, while proposing its own enforcement strategy which would essentially eliminate NOVs for Severity Level IV violations, supports the staff's proposal to the extent that it reduces licensee burden associated with non-risk significant violations.

However, in addition to proposing an entirely different enforcement strategy, NEI raised three

primary objections to the staff's proposal in an October 23, 1998, letter from Ellen Ginsberg to the Executive Director for Operations. Specifically, NEI objects to: 1) the level of description of Severity Level IV violations in inspection reports; 2) the issuance of an NOV based on a failure to place a violation into the corrective action program, arguing that some violations can be addressed by a "fix it now" process without formally entering it in the licensee's corrective action program; and 3) the issuance of an NOV based on NRC's identification of a repetitive violation, arguing that the NRC has not clearly defined "repetitive," introducing subjectivity into the process, and that this exception permits enforcement to become performance assessment, a function for which it is not well suited.

In response to NEI's alternate enforcement proposal, the staff believes that NOVs for Severity Level IV violations are appropriate under certain circumstances, as recommended by the staff in this paper. The staff believes that it is important to obtain a formal response from licensees for the reasons given above. Thus, the staff does not support the primary thrust of NEI's alternate enforcement approach, which would in effect eliminate NOVs for violations at Severity Level IV.

In response to NEI's specific comments on the staff's enforcement proposal, first, the staff believes it is premature to consider significantly reducing the description of violations in inspection reports until improvements in the inspection and performance assessment programs are fully developed and implemented. Secondly, while the staff agrees that "minor" violations can be addressed by a "fix it now" process, the staff does not believe the same is true for Severity Level IV violations. In the staff's view, Severity Level IV violations should be subject to an evaluation to determine whether additional corrective actions are necessary to prevent recurrence, as would be required if an NOV were issued. The staff recognizes that there are violations that do not require substantial efforts to prevent recurrence. In such cases, a corrective action process that includes: 1) restoring compliance; 2) evaluating the need for additional corrective actions to prevent recurrence; and 3) maintaining records that may be inspected at a later time would be adequate to avoid an NOV under exception 2 above. Finally, the staff does not believe that judgement can or should be totally eliminated from enforcement decisions. In many cases, the use of judgement results in a more equitable approach than might otherwise be called for by strict application of the policy. The staff has attempted to define the circumstances under which NOVs would be issued in a manner that would assure consistency, and will monitor the implementation of this enforcement approach.

#### Implementation

Should the Commission approve the staff's recommendation, the staff proposes to implement the revised enforcement approach by adding the enclosed Appendix C to the Enforcement Policy. Meanwhile, the staff is developing guidance and training to implement the revised approach. In addition, the Office of Enforcement will increase its involvement in non-escalated enforcement decision-making during an initial period to assure consistency in the application of this policy revision. The immediate changes necessary in the inspection program and associated training are expected to be completed by the end of 1998.

#### Recommendation:

The staff recommends that the Commission approve publication of Appendix C to the Enforcement Policy as described in Enclosure 1.

Coordination:

The Office of the General Counsel has no objection to this paper. The Office of the Chief Financial Officer has reviewed this paper for resource implications and the resources required to implement each of the options provided in this paper are available within the currently approved budget. The Office of the Chief Information Officer has reviewed this paper and has no information technology or information concerns.

Notes:

1. Appendix C to the Enforcement Policy will be published in the *Federal Register* and will become effective 30 days after publication. Comments on this revision will be accepted for 30 days after publication, and will be considered prior to the next revision to the Enforcement Policy.
2. The revision to the Enforcement Policy will be sent to all power reactor licensees.
3. The appropriate Congressional Committees will be notified.
4. The change does not contain information collection requirements that are subject to the Paperwork Reduction Act.
5. The staff has determined that this is not a "major" rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2).

William D. Travers  
Executive Director for Operations

Enclosure:

Federal Register notice with Appendix C to the Enforcement Policy



NUCLEAR REGULATORY COMMISSION

[NUREG - 1600, Rev.1]

Policy and Procedure for NRC Enforcement Actions; Revised Treatment of  
Severity Level IV Violations at Power Reactors.

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 C to the policy. This amendment revises the treatment of Severity Level IV violations at power reactors by: 1) expanding the use of non-cited violations (NCVs) to include Severity Level IV violations identified by the NRC; 2) providing that except under limited, defined circumstances, individual Severity Level IV violations normally will result in NCVs and not in Notices of Violation (NOVs); and 3) permitting NRC closure of most Severity Level IV violations based on their having been entered into a licensee's corrective action program.

DATES: This action is effective [30 days after publication in the Federal Register]. Comments on this revision should be submitted within 30 days of publication in the Federal Register and will be considered by the NRC prior to the next Enforcement Policy revision.

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 am and 4:15 pm, 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, DC 20555-0001, (301) 415-2741.

**SUPPLEMENTARY INFORMATION:**

Severity Level IV violations are defined in the NRC's Enforcement Policy as violations of more than minor concern which, if left uncorrected, could lead to a more serious concern. Violations at Severity Level IV, the least significant of the four severity levels established in the NRC Enforcement Policy, involve non-risk significant noncompliance with NRC requirements. NOVs are issued pursuant to 10 CFR 2.201, and normally require a written response within 30 days addressing: 1) the reason for the violation or basis for disputing the violation; 2) corrective steps that have been taken and results achieved; 3) corrective steps that will be taken to avoid further violations; and 4) the date when full compliance will be achieved. The policy provides that NOVs need not require a response if all of the necessary information is already available on the docket. The policy also permits certain licensee-identified Severity Level IV violations to be treated as non-cited violations (NCVs), but only if the licensee has committed to corrective actions by the end of the inspection, including corrective action to prevent recurrence.

In fiscal year (FY) 1997, power reactor licensees experienced a sharp increase in NOVs

issued for Severity Level IV violations, from approximately 770 in FY 1996 to 1,400 in FY 1997. In FY 1998, approximately 1,300 Severity Level IV NOVs were issued. In a memorandum to the Commission dated July 31, 1998, the NRC staff attributed the increase, in part, to efforts to improve the quality and consistency of the inspection and enforcement programs and to increased emphasis on the nexus between safety and compliance, and not to a decline in the performance of power reactor licensees.

In response to concerns about this increase, and its apparent contradiction with the substantial performance improvements of operating power reactors in the last two decades, the NRC initiated efforts to reconsider the treatment of non-risk significant (Severity Level IV) violations. In an August 25, 1998, memorandum to the Chairman, the Executive Director for Operations submitted a plan which included the objective of maintaining the NRC's ability to identify licensee problems in a timely manner and reducing unnecessary licensee burden associated with responding to non-risk significant violations.

The approach to enforcement of Severity Level IV violations, including the requirement to provide a written response to cited violations (those subject to an NOV) has essentially been unchanged since before the 1979 accident at Three Mile Island. Since that time, by almost all indicators, the overall performance of reactor licensees has substantially improved. Licensees have generally developed effective corrective action programs that cover not only safety-related activities under 10 CFR Part 50, Appendix B, but usually other activities regulated by the NRC (e.g., fire protection and physical security). In fact, findings of the NRC are generally only a small percentage of the issues, including noncompliances, identified by licensees and addressed in corrective action programs.

From a safety perspective, NRC Severity Level IV findings generally are not the most important matters being addressed in a licensee's corrective action program. Consequently, in light of the requirement to develop a comprehensive corrective action plan to address recurrence and provide a response to the NRC within 30 days pursuant to 10 CFR 2.201, an NOV may result in licensee priorities and activities that are inconsistent with a violation's relative safety significance. Thus, NRC findings may drive licensee priorities in their corrective action programs, rather than having the fundamental safety significance of the issue establish its priority. Additionally, requiring formal responses to Severity Level IV violations, which are included in a licensee's corrective action program subject to NRC inspection, may in most cases be an unnecessary administrative burden.

As a preliminary step to addressing this concern, the Director of the NRC's Office of Enforcement issued Enforcement Guidance Memorandum 98-006, dated July 27, 1998, to emphasize the provisions in the current Enforcement Policy that permit certain licensee-identified Severity Level IV violations to be treated as non-cited violations (NCVs) and certain NOVs to be issued without requiring a written response. Preliminary data indicates that this guidance has resulted in a decrease in the number of cited NOVs and in cited NOVs requiring a response. Notwithstanding the results of this initiative, licensees must still address Severity Level IV violations with a higher priority than may be justified by their safety significance. Licensee action is required to provide information to the NRC to support treatment of violations as NCVs, or to avoid having to provide a formal response to an NOV. The current policy also requires that NOVs be issued for Severity Level IV violations identified by NRC inspectors.

Severity Level IV violations represent a small fraction of issues identified by licensees

and included in licensee corrective action programs. The current Enforcement Policy approach has resulted in licensees placing a higher priority on these violations than their risk significance would merit. Accordingly, corrective action program issues with relatively higher risk significance may, by default, have been assigned lower priorities. Since individual Severity Level IV violations by definition do not involve risk-significant matters, the staff believes that there may be a benefit to safety if licensees are able to prioritize the resolution of Severity Level IV violations based on their safety significance. This can be accomplished if most Severity Level IV violations are closed by the NRC based on their being entered into a licensee's corrective action program. NOVs will be reserved for those cases where the NRC considers it important to obtain a description of the licensee's corrective actions on the docket. These changes will enhance the ability of licensees to address issues in their corrective action programs in accordance with their safety and risk significance, and will reduce unnecessary administrative burden associated with non-risk significant violations.

Therefore, the NRC is revising its Enforcement Policy for power reactor licensees. The revised policy affects the treatment of individual Severity Level IV violations by: 1) expanding the use of NCVs to include Severity Level IV violations identified by the NRC; 2) providing that except under limited, defined circumstances, individual Severity Level IV violations normally will result in NCVs and not NOVs; and 3) permitting closure of most Severity Level IV violations based on their having been entered into a licensee's corrective action program.

This revised enforcement approach is not intended to modify the NRC's emphasis on compliance with requirements. Severity Level IV violations will continue to be described in inspection reports as they are now, although the NRC will close these violations based on their

being entered into the licensee's corrective action program rather than a complete understanding of the licensee's corrective actions. At the time a violation is closed in an inspection report, the licensee may not have completed its corrective actions or begun the process to identify the root cause and develop action to prevent recurrence. Licensee actions will be taken commensurate with the established priorities and processes of the licensee's corrective action program. The NRC inspection program will provide an assessment of the effectiveness of the corrective action program. In addition to documentation in inspection reports, violations will continue to be entered into the Plant Issues Matrix (PIM) that the NRC maintains for each facility to assist in identifying declining performance and determining repetitiveness. The revised approach will allow licensees to dispute violations described as NCVs.

The circumstances under which an NOV will be considered and a brief discussion of each follows. Any one of these will result in consideration of an NOV requiring a formal written response from a licensee. The decision to issue an NOV will be based on the merits of the case.

6. *The licensee failed to restore compliance within a reasonable time after a violation was identified.*

The purpose of this exception is to emphasize the need to take appropriate action to restore compliance, or take compensatory measures if compliance cannot be immediately restored, once a licensee becomes aware of a violation.

7. *The licensee did not place the violation into a corrective action program to address recurrence.*

The purpose of this exception is to emphasize the need to consider actions beyond those necessary to restore compliance and which may be necessary to prevent recurrence. Placing a violation into a corrective action program to prevent recurrence is fundamental to the NRC's ability to close out a violation in an inspection report without detailed information regarding the licensee's corrective actions. The licensee is expected to provide the NRC with a file reference evidencing that the violation has been placed in the corrective action program. This will assist the NRC should it review the particular violation as part of an NRC inspection of the effectiveness of the licensee's corrective action program.

8. *The violation is repetitive as a result of inadequate corrective action, and was identified by the NRC.*

The purpose of this exception is to emphasize the importance of effective corrective action to prevent recurrence and the importance of licensees identifying recurring issues. For the purposes of this exception, the term "repetitive violation" is consistent with its definition in the Enforcement Policy, provided that the previous violation is one that was described in an NRC inspection report or otherwise described in docketed information. This exception will be used in those cases where: 1) corrective action for the previous violation had time to take effect and was deemed inadequate; or 2) corrective action for the previous violation wasn't taken in a time frame commensurate

with its safety significance. An NOV will not result if, despite the violation's recurrence, the NRC found the licensee's corrective actions for the previous violation reasonable. In addition, this exception will be applied only to repetitive violations identified by the NRC so as to encourage licensee identification and correction of repetitive issues.<sup>3</sup>

Licensees normally will be given credit for identifying repetitive violations which are self-disclosing, i.e., identified as the result of events.

9. *The violation was willful and is not subject to discretion pursuant to VII.B.1 of the Enforcement Policy.*

The purpose of this exception is to emphasize the importance of integrity and candor in carrying out licensed activities, as expressed in Section IV.C. of the Enforcement Policy. Nonetheless, certain licensee-identified willful violations (e.g., those involving the isolated acts of relatively low-level individuals, etc.) will remain eligible for treatment as NCVs, as they are under the current policy in Section VII.B.1. In addition, the NRC notes that willfulness may result in increasing the severity level of a violation; the use of this exception refers only to those situations where the significance of the willfulness does not justify an increase to Severity Level III, in which case escalated enforcement action will be considered.

In recommending a revised enforcement approach, the NRC has not lost sight of the

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<sup>3</sup>Licensee-identified, non-willful repetitive violations will be cited only if the ineffectiveness of the licensee's corrective action program is significant enough to rise to Severity Level III. Before making a decision to issue such a Severity Level III violation, consideration will be given to additional inspection effort, issuance of Demands for Information, management meetings, predecisional enforcement conferences, and outcomes of performance assessments.



lessons of plants that have had ineffective corrective action programs resulting in deficient performance and, in some cases, extended shutdowns. Given the lower risk significance of Severity Level IV violations, the staff's inspection efforts should be focused on the overall effectiveness of the corrective action program and not on the licensee's actions taken for each such violation. The staff intends to utilize a "smart" sample of NRC and licensee-identified findings in reviewing the effectiveness of corrective action programs. The immediate changes necessary in the inspection program and associated training necessary to implement this approach are expected to be completed by the end of 1998.

The NRC recognizes that additional Enforcement Policy changes may be considered as a result of ongoing efforts to make improvements to the inspection and performance assessment processes for power reactors. In addition, the NRC is considering additional changes to the Enforcement Policy and guidance documents to address issues such as the use of the term "regulatory significance" in determining severity levels, and further clarifying the threshold between Severity Level IV and "minor" violations, which are not normally described in inspection reports.

This Enforcement Policy revision addresses only power reactor licensees because of the scope, formality and general effectiveness of their corrective action programs, and the extent of the NRC inspection effort associated with these facilities. However, the NRC notes that it is considering the feasibility of expanding this revised enforcement approach to other categories of licensees in the future.

Since additional changes to the Policy may be necessary to address future changes to

the reactor oversight process, a more risk-informed and performance-based regulatory process, and application to other categories of licensees, this approach for Severity Level IV violations involving power reactors is being implemented by adding Appendix C to the Enforcement Policy as an interim step.

#### 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, the NRC Enforcement Policy is amended by adding Appendix C as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT  
ACTIONS

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**Appendix C: Interim Enforcement Policy for Severity Level IV Violations Involving  
Activities of Power Reactor Licensees**

The Commission is issuing this Appendix to revise its policy with respect to Severity Level IV violations at power reactors. This is being issued as an appendix to the policy and characterized as interim because the Commission expects to make additional changes to its Enforcement Policy as a result of the efforts to improve its inspection and performance assessment programs.

This Appendix revises the NRC's treatment of individual Severity Level IV violations at power reactors by: 1) expanding the use of non-cited violations (NCVs) to include Severity Level IV violations identified by the NRC; 2) providing that except under limited, defined circumstances, individual Severity Level IV violations normally will result in NCVs and not Notices of Violation (NOVs) ; and 3) permitting NRC closure of most Severity Level IV violations based on their having been entered into a licensee's corrective action program.

This revised enforcement approach is not intended to modify the NRC's emphasis on compliance with requirements. Severity Level IV violations will continue to be described in inspection reports as they are now, although the NRC will close these violations based on their being entered into the licensee's corrective action program rather than a complete understanding of the licensee's corrective actions. At the time a violation is closed in an inspection report, the licensee may not have completed its corrective actions or begun the

process to identify the root cause and develop action to prevent recurrence. Licensee actions will be taken commensurate with the established priorities and processes of the licensee's corrective action program. The NRC inspection program will provide an assessment of the effectiveness of the corrective action program. In addition to documentation in inspection reports, violations will continue to be entered into the Plant Issues Matrix (PIM) that the NRC maintains for each facility to assist in identifying declining performance and determining repetitiveness. The revised approach will allow licensees to dispute violations described as NCVs.

Because the NRC will not normally obtain a written response from licensees describing actions taken to restore compliance and prevent recurrence of Severity Level IV violations, this revised enforcement approach places greater NRC reliance on licensee corrective action programs. Therefore, notwithstanding the normal approach of treating most Severity Level IV violations as NCVs, the NRC has identified four circumstances in which a written response to a Severity Level IV violation may be important. Any one of the following circumstances will result in consideration of an NOV requiring a formal written response from a licensee.

10. The licensee failed to restore compliance within a reasonable time after a violation was identified.
11. The licensee did not place the violation into a corrective action program to address recurrence.
12. The violation is repetitive as a result of inadequate corrective action, and was identified

by the NRC.

13. The violation was willful and is not subject to discretion pursuant to VII.B.1 of the Enforcement Policy.

To the extent the NRC Enforcement Policy is not modified by the above, the Policy remains applicable to power reactor licensees.

Dated at Rockville, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 1998.

For The Nuclear Regulatory Commission.

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John C. Hoyle,  
Secretary of the Commission.