

December 22, 1997

SECY-97-295

For: The Commissioners

From: L. Joseph Callan /s/  
Executive Director for Operations

Subject: TWO-YEAR REVIEW OF THE ENFORCEMENT POLICY, PROPOSED  
REVISION TO THE ENFORCEMENT POLICY, NUREG-1600, REV.1

Purpose:

To provide the Commission with the staff's 2-year review of the NRC Enforcement Policy and to obtain Commission approval to revise the NRC Enforcement Policy consistent with the recommendations included in the report.

Background:

In SECY-95-084, dated April 6, 1995, the staff forwarded to the Commission the report of the review team that addressed the NRC enforcement program, NUREG-1525, "Assessment of the NRC Enforcement Program." This paper proposed numerous revisions to the enforcement program and the NRC's Enforcement Policy. By Staff Requirements Memorandum (SRM) dated June 16, 1995, the Commission approved the majority of the revisions to the Enforcement Policy.

The Commission published a complete revision of the NRC's Enforcement Policy in the *Federal Register* on June 30, 1995 (60 FR 34381). The revisions to the Enforcement Policy were intended to, among other things:

- Emphasize the importance of identifying problems before events occur, and of taking prompt, comprehensive corrective action when problems are identified;
- Direct agency attention at licensees with multiple enforcement actions in a relatively short period; and

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- Focus on current performance of licensees.

The revisions to the Enforcement Policy were also intended to better focus the inspection and enforcement process on safety, provide greater incentives for strong self-monitoring and corrective action programs in the civil penalty assessment process, provide more predictability and consistency in the civil penalty assessment process, and to better convey clear regulatory messages.

The staff subsequently published the revised Enforcement Policy as NUREG-1600.

The Commission's June 16, 1995, SRM also required that the staff provide a report to the Commission on the experience under the new policy, including the consideration of public comments after 18 months of experience under the new policy. (The Commission's intent was for a 2-year report of the Enforcement Policy.) On February 5, 1997 (62 FR 5495), the NRC published an opportunity for the public to comment on the revised Enforcement Policy. The agency received three responses, including: (1) a response from the Nuclear Energy Institute (NEI), (2) a response from members of the Region IV Utility Group (RUG IV), and (3) a response on behalf of the Council on Radionuclides and Radiopharmaceuticals (CORAR). Subsequent to the comment period, the agency received a letter from the Union of Concerned Scientists (UCS) on September 9, 1997, recommending that the agency perform a review of the Enforcement Policy aimed at (1) curtailing its subjectivity (i.e., improving consistency), and (2) improving the timeliness for enforcement actions. Although the UCS request was made beyond the comment period, the staff considered UCS's comments within its review of the Enforcement Policy. In addition, a public meeting was conducted at the NRC's offices at Two White Flint North in Rockville, Maryland on December 5, 1997, to discuss the NRC's Enforcement Policy and enforcement program. The meeting was arranged at the request of UCS in response to a letter from the Director of OE, dated October 14, 1997, that responded to the September 9, 1997 UCS letter. NEI was also a scheduled participant at this meeting. Although the public meeting was conducted beyond the comment period, the staff has considered UCS's and NEI's comments made during the meeting in this review. These comments, as well as the others, are addressed in the related sections of the report and staff conclusions on the comments are also given.

#### Discussion:

The staff has completed its review of approximately 2 years of experience under the revised Enforcement Policy and has considered public comments. The report, "NRC Enforcement Policy Review, July 1995 - July 1997," is included as Enclosure 1. Several recommendations are included, some of which require Commission approval and some of which the staff can implement on its own. In general, the report concluded that the changes made to the Enforcement Policy in 1995 (especially in the civil penalty assessment process) have helped to improve the predictability and consistency of enforcement actions, while maintaining the agency's desire to use enforcement sanctions for providing appropriate emphasis and deterrence in a way that helps to support the agency's overall safety mission.

## I. RELEASE OF THE REPORT

Pending the Commission's decisions on the recommendations, I recommend that this report be publicly released to the NRC's Public Document Room. As noted in the recommendations section below, the staff proposes to release this report 10 working days from the date of this paper and issue it as NUREG-1622. It is the staff's intent to include this report on the Office of Enforcement's home page on the Internet.

## II. RECOMMENDATIONS OF THE REPORT

The recommendations (included on pages 42-44 of the report) should be implemented, as they will improve the Commission's enforcement program.

### A. RECOMMENDATIONS FOR COMMISSION APPROVAL

As summarized in Section III of the report, 9 of the 20 recommendations (recommendations 3, 9, 11, 12, 13, 14, 15, 16, 20) concern revisions to the Enforcement Policy. The staff notes that recommendation 3 is consistent with the Commission's August 25, 1997, SRM, in that *applicable* portions of the Commission's statement on safety and compliance are proposed for inclusion in the Enforcement Policy. (In particular, item four of the statement, that addressed duplicative or unnecessary requirements, was not considered appropriate for inclusion in the Enforcement Policy.) A *Federal Register* notice with Statements of Consideration addressing the revisions to the Enforcement Policy that would publish a complete revision of the Enforcement Policy is provided in Enclosure 2. The complete revision of the Enforcement Policy not only includes the revisions that implement the staff's recommendations noted above, but also reflects a consolidation of the 10 revisions to the Enforcement Policy since June 30, 1995. Enclosure 3 is a comparative text comparing the revised policy with the current policy.

It is proposed that this revision be effective upon publication as has been the practice with respect to previous revisions to the Enforcement Policy. A 60 day comment period is provided. However, unless substantive comments are received that differ from those considered by the staff in response to the February 1997 *Federal Register* notice considered by the staff, the staff would not expect to recommend any additional changes to the revised Policy.

### B. RECOMMENDATIONS FOR STAFF ACTION

As summarized in Section III of the report, 10 of the 20 recommendations (recommendations 1, 2, 4, 5, 6, 7, 8, 10, 17, 18, 19) involve recommendations that the staff intends to implement. Recommendations 1, 5, and 10 pertain to areas that the staff has not been able to focus resources on in the past. As a result of the budget process, the staff intends to address all recommendations with the 28 FTE budgeted for the enforcement program in FY 1999, a growth of 9 FTE over the FY 1997 level. However, the ability to completely address recommendations 1, 5, and 10 is dependent on the volume of enforcement actions received.

#### Coordination:

The Office of General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The

Office of the Chief Information Officer has reviewed this paper and has no information technology or information management concerns. The Office of Public Affairs agrees with recommendations 17 and 18.

Recommendations:

- 1) Absent Commission objection, I plan to issue the 2-year report as NUREG-1622 and disseminate it 10 working days from the date of this paper.
- 2) The Commission should approve the enclosed *Federal Register* notice publishing the revised Enforcement Policy and associated recommendations 3, 9, 11, 12, 13, 14, 15, 16, and 20.
- 3) Note:
  - a. That the policy statement will be published in the *Federal Register*, effective immediately, allowing 60 days for public comments.
  - b. The revised Enforcement Policy will be published as NUREG-1600, Rev.1 and copies will be sent to all licensees.
  - c. The change does not contain information collection requirements that are subject to the paperwork Reduction Act.
  - d. 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) and has confirmed this determination with OMB.

L. Joseph Callan  
Executive Director for Operations

Enclosures:

1. Two-Year Review of the Enforcement Policy
2. *Federal Register* notice with Revised Enforcement Policy
3. Comparative text between current and revised Enforcement Policy

The Commissioners

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# ***NRC ENFORCEMENT POLICY REVIEW***

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*July 1995 - July 1997*

*Office of Enforcement*

***U.S. Nuclear Regulatory Commission***

### *Abstract*

On June 30, 1995, the Nuclear Regulatory Commission (NRC) issued a complete revision of its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) (60 FR 34381). In approving the 1995 revision to the Enforcement Policy, the Commission directed the staff to perform a review of its implementation of the Policy after approximately 2 years of experience and to consider public comments. This report represents the results of that review.



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### ***I. Background***

The Commission, in approving the 1995 revision to the Enforcement Policy, directed the staff to perform a review of its implementation of the Policy after approximately 2 years of experience. This report represents the results of that review.

Part I of the report provides an overview of: (1) the 1995 Enforcement Program reassessment, (2) the subsequent 1995 Enforcement Policy revision, and the Commission's request for the staff to review the Enforcement Policy and consider public comments after it had been in effect for approximately 2 years, (3) the Office of Enforcement's methods for performing the Commission-requested review, and (4) the revisions to the Enforcement Policy since June 30, 1995,

#### ***A. 1995 Assessment of the NRC Enforcement Program***

On May 13, 1994, the Executive Director for Operations (EDO) established a Review Team composed of senior NRC managers to reexamine the NRC enforcement program. The Review Team evaluated the existing Enforcement Policy, other Federal agency enforcement policies, and solicited comments from various NRC offices, other Federal agencies, members of industry and the public. The report of this comprehensive review was published in April 1995, as NUREG-1525, "Assessment of the NRC Enforcement Program." The Review Team subsequently made recommendations to the Commission for revisions to the Enforcement Policy in SECY-95-084.

#### ***B. June 30, 1995 Revised Enforcement Policy***

In a Staff Requirements Memorandum (SRM) dated June 16, 1995, the Commission approved publication of a major revision to the NRC Enforcement Policy based on many of the recommendations made in SECY-95-084. The revised Enforcement Policy was effective upon its publication in the *Federal Register* on June 30, 1995 (60 FR 34381). The Enforcement Policy was subsequently issued as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions."

The more significant changes adopted by the Commission (as they appear in the Enforcement Policy) include: (1) clarification of the purpose statement, (2) elimination of Severity Level V categorization, (3) revision of the threshold and criteria for predecisional enforcement conferences, (4) elimination of responses to certain Notices of violation, (5) revision of the base civil penalty tables, (6) elimination of civil penalties for Severity Level IV violations, (7) streamlining the civil penalty assessment process, and (8) preservation of the ability to exercise discretion. These changes are described in further detail in Appendix A of this report.

The Commission did not approve the staff's recommendations regarding provisions for Commission consultation and open predecisional enforcement conferences. Instead, the Commission directed the staff to continue the trial program for conducting certain conferences open to public observation.

The Commission also directed the staff to return to the Commission with a recommendation regarding these two issues after 1 year of experience with the Policy.<sup>1</sup>

In the June SRM, the Commission also directed the staff to evaluate the revised Enforcement Policy after it had been in use for approximately 2 years and to consider comments from the public based on the revised Policy.

### ***C. Methodology***

The focus of this review is the revisions that were made to the Enforcement Policy as it was published in the *Federal Register* on June 30, 1995, (60 FR 34381) and subsequently published as NUREG-1600.

The Office of Enforcement (OE) issued a *Federal Register* notice on February 5, 1997, to solicit public comments on the 1995 revisions to the Enforcement Policy. A copy of this notice is included as Appendix C. The agency received three responses, including: (1) a response from the Nuclear Energy Institute (NEI), (2) a response from members of the Region IV Utility Group (RUG IV), and (3) a response on behalf of the Council on Radionuclides and Radiopharmaceuticals (CORAR).

Subsequent to the comment period, the agency received a letter from the Union of Concerned Scientists (UCS) on September 9, 1997, recommending that the agency perform a review of the Enforcement Policy aimed at (1) curtailing its subjectivity (i.e., improving consistency), and (2) improving the timeliness for enforcement actions. Although the UCS request was made beyond the comment period, the staff believes that it is appropriate to consider UCS's comments within its review of the Enforcement Policy.

In addition, a public meeting was conducted at the NRC's offices at Two White Flint North in Rockville, Maryland on December 5, 1997, to discuss the NRC's Enforcement Policy and enforcement program. The meeting was arranged at the request of UCS in response to a letter from the Director of OE, dated October 14, 1997, that responded to the September 9, 1997 UCS letter. NEI was also a scheduled participant at this meeting. Although the public meeting was conducted beyond the comment period, the staff has considered UCS's and NEI's comments made during the meeting in this review. A copy of the meeting summary was placed in the NRC Public Document Room.

OE also solicited comments from the regions and program offices on a variety of issues associated with the objectives of the revised Enforcement Policy. The staff also considered insights from industry and public comments informally communicated to the staff during the 2-year period.

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<sup>1</sup> After further consultation, the Commission subsequently approved changes to the Enforcement Policy in December 1996 to address Commission consultation and open conferences. (See Appendix B, item 3 for additional information.)

#### ***D. Changes to the Enforcement Policy Since June 30, 1995***

Subsequent to June 30, 1995, the Enforcement Policy has been revised 10 times. These revisions (listed chronologically) included the following issues: (1) adjustment of civil monetary penalties; (2) departures from the FSAR; (3) Commission consultation, open predecisional enforcement conferences, risk, and NCVs; (4) Part 20, exceedance of dose constraints; (5) correction to exercise of discretion; (6) gaseous diffusion plants, NRC organizational changes, and Commission consultation; (7) participation in enforcement conferences involving discrimination; (8) Part 34, radiography, and examples of potential violations; (9) editorial corrections; and (10) clarification on release of Office of Investigations (OI) reports associated with predecisional enforcement conferences involving discrimination and the role of the complainant. These revisions are described in further detail in Appendix B.

### ***II. Discussion of Comments and Issues***

Part II of this report provides a summary of the major comments, a discussion of the issues, and conclusions and recommendations.

#### ***A. Public Involvement***

##### **◆ *Comments***

NEI, RUG IV, and CORAR all commented that they appreciated the NRC's institution of a trial period during which the agency, industry, and members of the public have had an opportunity to evaluate whether the revisions to and the implementation of the revised Policy provide a sound regulatory framework. However, RUG IV commented that the Commission is best served when public comments are solicited and considered when important changes to existing NRC staff positions are issued. In particular, RUG IV recommended that future Enforcement Guidance Memorandums (EGMs)<sup>2</sup> be noticed, that public comments be considered, and that they be issued with the date of their effectiveness specifically established.

##### **◆ *Discussion***

Because the Enforcement Policy is a policy statement and not a regulation or proposed rule,<sup>3</sup> changes are effective upon publication without a preliminary comment period. However, the Commission has routinely published notices to provide the public an opportunity to provide comments for the

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<sup>2</sup> EGMs are the normal method for the Director, OE, to issue additional enforcement guidance to the staff. EGMs may add guidance for Enforcement Policy application, revise existing guidance on processing enforcement actions, or transmit temporary guidance.

<sup>3</sup> See Section II.G.4 of NUREG-1525.

Commission's consideration.<sup>4</sup> EGMs, on the other hand, are not, in and of themselves statements of policy. Instead, they are internal staff documents providing guidance on how to implement the Enforcement Policy. In many cases, an issue arises that necessitates issuance of prompt guidance to the staff. To institute a notice and comment process for staff guidance would delay necessary implementation guidance and adversely affect the need for flexibility. EGMs are placed in the NRC Public Document Room, included in the NRC Enforcement Manual, NUREG/BR-0195, and recently are included on OE's home page on the Internet at [www.nrc.gov/OE/](http://www.nrc.gov/OE/). Interested parties may always provide comments for OE's consideration.

◆ *Conclusion*

EGMs should continue to be issued to the staff as necessary, and should be available to the public after issuance.

**B. *Alternative Enforcement Practices***

◆ *Comments*

Although NEI commented that the revised Enforcement Policy was an improvement from the previous version, it recommended that the NRC give serious consideration to making fundamental changes, including changes that would: (1) avoid the current disproportionate emphasis on deterrence, (2) seek to more closely focus the enforcement process on safety, (3) provide clear and positive incentives to licensees to identify and correct noncompliances, and (4) eliminate the use of enforcement as a substitute for other regulatory mechanisms. The following discussion will address NEI's view that the Enforcement Policy disproportionately emphasizes deterrence.<sup>5</sup> In particular, NEI stated that the purpose of the inspection and enforcement program should be to identify and promote correction of noncompliances...not to take punitive action after the licensee has addressed the problem. NEI contended that the threat of an enforcement action has little to do with licensee compliance in any given circumstance (other than a willful violation) and that licensees comply because they take their responsibility to operate safely as a paramount objective.

CORAR recommended that the NRC consider applying enforcement practices compatible with other Federal agencies. CORAR specifically recommended consideration of an approach (which they attributed to the Federal Aviation Administration (FAA)) where minor violations are brought to the attention of the licensee, but not publicly noticed unless the licensee has not corrected them after two repeat notices.

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<sup>4</sup> Unlike rulemaking, the notice and comment process is not required for Commission policy statements. However, comments received after publication are considered during implementation and for future changes.

<sup>5</sup> NEI's comment regarding the need to more closely focus the enforcement process on safety is addressed in Section II.E of this report, NEI's comment regarding the elimination of the use of enforcement as a substitute for other regulatory mechanisms is addressed in Section II.F, and NEI's comment regarding the need to provide clear and positive incentives to licensee to identify and correct noncompliances is addressed in Section II.K.3.

◆ *Discussion*

As part of the 1995 enforcement program reassessment, the Review Team considered the issue of deterrence as an enforcement objective (NUREG-1525, Section II.A.1.c). The NRC recognizes that in activities as complex as most nuclear operations, with hundreds and even thousands of requirements, some violations will inevitably occur. Based on this recognition, the enforcement program seeks to not only emphasize the importance of compliance, but also to emphasize the need to identify and correct violations before there is impact on the public health and safety. In the staff's view, the current Enforcement Policy appropriately provides deterrence value to both the involved licensee and other licensees who could be subject to enforcement action for similar violations. By providing incentives to promptly identify and promptly establish lasting corrective action, the Enforcement Policy provides for an appropriate balancing of the circumstances of each case to provide an additional motivation for compliance. The staff does not believe that the deterrence focus of the Enforcement Policy to provide this motivation should be changed.

The 1995 Review Team also evaluated and reviewed enforcement policies and practices of other Federal agencies, including the EPA, DOE, and FAA, and met with senior representatives from the FAA and the EPA. The staff believes that the current Enforcement Policy is better suited to regulation of nuclear activities than the other Federal agencies' programs. Using CORAR's example, NRC treatment of minor violations is similar to the description of the FAA's approach, in that they are frequently brought to the attention of the licensee, but not publicly noticed. Specifically, minor violations are not normally documented in inspection reports, and to the extent that they are, they are treated as Non-Cited Violations.<sup>6</sup> However, failure to take corrective action for a known violation (regardless of the severity level) is unacceptable in any nuclear program.<sup>7</sup> It may even represent a willful disregard for regulatory requirements. Consequently, refraining from issuing enforcement action until a licensee has been given notice to correct a violation for the third time is inconsistent with the agency's expectations for licensee performance. In addition, the NRC has a public approach to regulation. All inspection reports, except those that include safeguards information, are made public.

Finally, the staff notes that the NRC's Enforcement Policy complies with the Small Business Regulatory Enforcement Fairness Act (Act), that became effective in March 1996. Specifically: (1) under the current system, smaller licensees generally pay smaller civil penalties, because the agency's graduated civil penalty structure takes into account differences in the size of the licensee, the licensee's ability to pay, and the safety risk of the violation involved; (2) civil penalties are normally

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<sup>6</sup> From Section IV of the NRC Enforcement Policy.

<sup>7</sup> Once a licensee identifies a violation requiring corrective action, the NRC expects that a licensee will take *some* action to correct the problem (it may be as simple as documenting a proposed action plan to correct a procedure). This is reflected, for example in Section VI.B.2.b of the Enforcement Policy, that provides that "the concept of Identification presumes that the identifier recognizes the existence of a problem, and understands that corrective action is needed." Therefore, evidence of *some* action is necessary to warrant credit for Identification. The degree of promptness and comprehensiveness is considered under the Corrective Action factor.

proposed only for significant violations; (3) civil penalties are normally waived for licensees who identify their own violations and take prompt and comprehensive corrective action; and (4) civil penalties are normally assessed for willful violations, particularly poor performance, overexposures, loss of radioactive material, and very significant violations.

Further, the Policy makes clear that in determining the amount of the civil penalty, financial hardship can be considered. It is not the NRC's intent that the economic impact of a civil penalty be so severe that it puts a licensee out of business or adversely affects the licensee's ability to conduct licensed activities safely.<sup>8</sup> In such cases, penalties may be reduced or the licensee may be permitted to pay the penalty over time.

◆ *Conclusion*

The staff believes that the current Enforcement Policy is appropriately geared toward creating deterrence (i.e., taking action in a manner that will provide incentives to identify and correct violations that have occurred and discourage future violations) and is properly structured for nuclear regulation.

**C. *Need for Improved Definitions***

◆ *Comments*

RUG IV commented that the current criteria in the Enforcement Manual for a violation to be classified as a minor violation have led to inconsistent application, that the current definitions in the Enforcement Manual for actual and potential safety consequence/significance lack specificity that has led to inconsistent application, and that the current definition in the Enforcement Policy and Enforcement Manual for regulatory concern is inconsistent. RUG IV proposed definitions for actual safety significance and safety consequence and for regulatory concern.<sup>9</sup> RUG IV supported the position that a violation's potential safety significance or consequence be evaluated using a consistent, documented methodology and recommended that the established terms and definitions in NUREG-1022, "Event Reporting Guidelines 10 CFR 50.72 and 50.73," be used for evaluating and assessing potential safety significance.

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<sup>8</sup> Orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed or certified activities.

<sup>9</sup> RUG IV proposed the following definition for actual safety significance and safety consequence: "The event must cause an actual overexposure in excess of NRC regulatory limits (10 CFR 20), offsite release of radioactivity in excess of NRC regulatory limits (10 CFR 20), or result in the actual loss of the safety function of a safety train or system (inability of the safety train or system to perform its safety function as described in the UFSAR, as credited in the Chapter 15 Accident Analysis)." RUG IV proposed the following definition for regulatory concern: "The event involves any of the following circumstances: aggregation, repetition, willfulness, and/or reporting."

Both NEI and UCS recommended that the NRC limit the agency's evaluation of a violation's safety significance, as used in enforcement, to include consideration of actual and potential consequence and to exclude consideration of regulatory significance. NEI and UCS based this recommendation on concerns that regulatory significance is not well defined, is inconsistently applied, and is a vehicle to base enforcement on a licensee's "regulatory standing," versus the real safety significance. NEI and UCS were particularly concerned about the agency's use of programmatic issues as an example of regulatory significance.

◆ *Discussion*

The issue of minor violations will be addressed in Section II.H.4 of this report. The current Enforcement Policy does not specifically "define" actual safety significance, potential safety significance, regulatory concern, or regulatory significance. Instead, the Enforcement Policy states that the first step of the enforcement process is to evaluate the relative importance of each violation, including both the *technical and regulatory significance*. The Enforcement Policy was revised on December 10, 1996,<sup>10</sup> to clarify that technical significance includes both actual and potential consequences and that risk is an appropriate consideration in evaluating the technical significance of a violation. The Statements of Consideration stated:

In analyzing risk, the NRC recognizes the uncertainties associated with risk assessment. Generally, qualitative rather than quantitative risk assessments are made given the number of variables associated with risk assessment. Risk should be a consideration in proposing enforcement actions, but not necessarily determinative. In developing higher civil penalties, the Commission intends to consider, where appropriate, assessing separate civil penalties for each violation that is aggregated into a Severity Level II problem.

The staff issued additional guidance on risk considerations in enforcement actions in EGM 97-011, dated June 6, 1997. The guidance states that risk is a relevant consideration in enforcement decisions concerning severity levels, appropriateness of sanctions, and the exercising of enforcement discretion. It also stated that the staff should continue to balance risk information against the guidance currently provided in the Enforcement Policy and the Enforcement Policy Supplements. Judgment must be exercised in the use of risk significance as a factor in decisions regarding the appropriateness of the sanction. There may be cases where, due to increased risk significance, it is appropriate to both escalate the severity level and the sanction in order to convey the correct regulatory message to the licensee and the use of enforcement discretion may be warranted to reach the proper enforcement action. For example, based on risk information it may be warranted to treat violations normally considered a Severity Level IV violation at a higher severity level.

While a higher severity level and sanction are warranted for violations that have greater risk significance, lower risk does not mean that severity levels should necessarily be reduced from those

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<sup>10</sup> 61 FR 65088.

provided in the Supplements. As stated before, risk is only one component in the consideration of the appropriate severity level. Severity level considers actual consequence, potential consequence (risk), and regulatory significance. Therefore, a violation with little or no actual safety consequence and lower risk significance may still pose a significant regulatory concern and warrant a higher severity level and/or sanction. In deciding whether a violation should be categorized at Severity Level III or IV, risk significance is considered. Low risk does not excuse noncompliance. If a licensee believes an issue is of low risk and not worthy of being a requirement, the licensee may seek a change to the requirement. However, compliance is required until the requirement is changed.

The Enforcement Manual provides additional guidance to the staff and states in Section 3.5.a that safety significance involves the consideration of three factors: (1) the actual safety consequence (*e.g.*, overexposure, offsite release, loss of a safety system), (2) the regulatory significance, and (3) potential safety consequence and provides examples to illustrate the concepts. While not specifically defined in either the Enforcement Policy or the Enforcement Manual, regulatory concern or regulatory significance has traditionally been understood to involve issues such as, *but not limited to*, programmatic breakdowns, repetitive violations, willfulness, reporting failures, licensees' refusal to comply, and management involvement.

The staff does not agree with RUG IV's limiting definitions provided in footnote 9 for actual safety consequence and regulatory significance. As emphasized in the preceding paragraph, the staff's guidance provides a starting point for the concepts of actual and potential safety consequence and regulatory significance. Supplements I through VIII of the Enforcement Policy provide examples of violations in eight different activity areas and serve as additional guidance in determining severity levels. Many of these examples include the level of specificity suggested in RUG IV's definition for actual safety significance. However, it should be noted that the examples in the supplements are neither exhaustive nor controlling.

NUREG-1022 clarifies the immediate notification requirements of 10 CFR 50.72 and the 30-day written licensee event report (LER) requirements of 10 CFR 50.73. While the information in NUREG-1022 has provided helpful guidance to the industry and to the staff, it was not developed with enforcement in mind.<sup>11</sup> Nevertheless, there may be information within NUREG-1022 that can be helpful in the enforcement program. The staff will consider this as it completes its review of the Enforcement Policy supplements.<sup>12</sup>

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<sup>11</sup> From the executive summary of NUREG-1022, "The information reported under 10 CFR 50.72 and 50.73 is used by the NRC staff in responding to emergencies, monitoring ongoing events, confirming licensing bases, studying potentially generic safety problems, assessing trends and patterns of operational experience, monitoring performance, identifying precursors of more significant events, and providing operational experience to the industry."

<sup>12</sup> Recommendation II.B-3 of NUREG-1525 stated that OE should work with the program offices and regions to review the severity level examples in the supplements to ensure that the examples are appropriately focused on safety significance. OE notes that it has been unable to complete the review of the Enforcement Policy

In addition, the staff does not agree with NEI and UCS that regulatory significance should be eliminated from the evaluation of a violation's significance. There may be cases where the actual and potential safety consequences are negligible or non-existent, yet circumstances exist that represent a significant concern. For example, the failure of an auxiliary operator to perform a required surveillance for a piece of equipment may not result in an actual consequence and may not pose a significant potential consequence. However, if the operator's failure represents a repetitive occurrence, the repetitive nature of the failure could represent a significant regulatory concern that could elevate the overall safety significance of the violation. The staff believes that it should assess whether a violation is part of a pattern of noncompliance (i.e., the degree of pervasiveness) that can lead to the determination that licensee control processes are no longer adequate to ensure protection of the public health and safety. NEI and UCS both raised specific concerns regarding the staff's use of programmatic issues and conclusions. For example, what factors should be considered when a single event discloses a programmatic issue in comparison to a programmatic issue based on time. The supplements to the Enforcement Policy address programmatic issues in the context of "breakdown in the control of licensed activities," (see e.g., Supplement I.C.7). The staff believes that this is an area that deserves more focus. The staff notes that the enforcement program is dependent on the inspection program's ability to identify programmatic issues in a consistent manner. This requires not only additional guidance for determining when a programmatic or breakdown in control issue is evident, but also requires strong management oversight of the inspection program to ensure that the inspection program does not inadvertently skew the enforcement program by inconsistent inspection views. The staff will consider programmatic issues as the staff completes its review of the Enforcement Policy supplements.

The staff recognizes the need to develop additional guidance, provide additional training, and perform audits to ensure consistency in the enforcement program. Consistency has especially been a challenge in the area of non-escalated enforcement actions because of the limited oversight by OE. In the past, OE's primary focus has been on escalated actions. OE intends to provide additional oversight and training in an effort to improve consistency. The degree of effort associated with this task will be a function of the available resources. In addition, in an effort to improve the clarity of enforcement communications, OE intends to provide additional enforcement guidance directing that correspondence transmitting escalated enforcement actions indicate whether the issue was safety significant because it represented an actual consequence, a potential consequence, or a regulatory concern (or a combination of these issues). (See the corresponding discussion in Section II.E.) As a final note, it should be emphasized that the agency's approach to enforcement involves considerable judgment and discretion rather than a mechanical treatment. In light of the considerable judgement that is exercised in determining whether an issue represents a significant regulatory concern (including programmatic issues), it may be appropriate to consider greater management oversight.

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Supplements (that include examples of violations at the four severity levels) because of resource constraints. Subject to available resources, OE intends to complete the severity level review.

◆ *Conclusion*

The staff does not believe that the Enforcement Policy should be modified to include limiting definitions for actual and potential safety consequence and regulatory significance or regulatory concern, nor should it eliminate regulatory significance as a consideration of the relative importance of a violation. The staff should provide additional guidance to the staff in establishing severity levels, including the use of terms, actual consequence, potential consequence, and regulatory significance. The staff should continue its efforts to complete the review of the Enforcement Policy supplements. Greater management oversight should be considered in cases based on regulatory significance, especially those involving programmatic issues. These actions should help improve the consistency of enforcement actions.

***D. New Rulemaking and the Enforcement Policy***

◆ *Comments*

RUG IV recommended that EGMs or similar clarification of how the NRC staff will apply the Enforcement Policy to new rules be issued and evaluated concurrently with the new proposed rulemaking.

◆ *Discussion*

The staff has, in some instances, included Enforcement Policy changes as part of rulemaking, e.g., Part 20, Part 34. However, this has not always been done. Further, as RUG IV points out, the Maintenance Rule was implemented on July 10, 1996, and EGM 96-002 was issued on August 21, 1996. Development of inspection and enforcement guidance can help identify and understand implementation issues associated with the rulemaking and may identify issues with the rulemaking. The staff should develop draft guidance at the proposed stage so that the Commission can be satisfied that the staff's inspection and enforcement guidance is consistent with the Commission's intentions. In SECY-97-168, "Issuance For Public Comment of Proposed Rulemaking Package For Shutdown and Fuel Storage Pool Operation," dated July 30, 1997, the staff stated it would provide such guidance as part of the final rulemaking.

◆ *Conclusion*

The staff should consider inspection and enforcement guidance when new rules are developed and implemented.

## *E. Maintaining Safety Focus*

### ◆ *Comments*

NEI commented that enforcement can and should be more effectively linked to safety. NEI stated that for violations with little or no safety consequence, where timely and corrective action has been implemented, subsequent enforcement action only diverts licensee resources from other, more potentially safety significant activities. NEI recommended that the NRC adopt an approach that does not dictate that enforcement action be taken simply because a noncompliance is found. If the noncompliance doesn't represent a valid risk to public health and safety (such as a violation of documentation or reporting requirements), NEI recommended that no enforcement action be taken. Instead, NEI recommended that the NRC impose enforcement sanctions (presumably escalated actions) in those relatively rare cases where a licensee was or should have been aware of a potential safety problem and did not timely identify, report and/or correct it, or for noncompliances of obvious safety significance or if there is an intentional violation. By reserving escalated enforcement for those kinds of cases, NEI suggested that the NRC would send a clear signal to the licensee -- a violation then would mean an important issue exists, a message that now is diluted when violations are given routinely for matters of no real safety significance.

### ◆ *Discussion*

The staff agrees that the enforcement program must maintain a clear focus on safety. Violations vary in their degree of safety, safeguards, or environmental significance; for that reason, the Enforcement Policy provides a graduated system of sanctions, varied according to the technical significance (i.e., actual and potential consequences) and the regulatory significance. This graduated system appears both in the range of severity levels assigned to different violations, and in the availability of different enforcement actions (e.g., NCVs, NOVs, civil penalties, and orders). Maintaining a safety focus was addressed in the 1995 enforcement program reassessment, as described in Section II.A.1.b of NUREG-1525.

Modifications were made to the Enforcement Policy to assist the staff and industry in maintaining a safety focus. For example, Section IV of the Enforcement Policy provides that minor violations not be the subject of formal enforcement action and not normally be documented in inspection reports. When sufficient information regarding a licensee's corrective actions exists on the docket, the NRC may waive a licensee's response to an NOV. Civil penalties are no longer proposed for repetitive Severity Level IV violations, unless the repetitive violation is such that it warrants classifying the matter as a Severity Level III violation. The Policy continues to provide that Licensee-identified and corrected Severity Level IV violations be dispositioned as NCVs, provided they meet the remaining criteria for discretion in Section VII.B.1.

In an SRM dated August 25, 1997, the Commission outlined a general approach to safety and compliance. The discussion stated:

As commonly understood, safety means freedom from exposure to danger, or protection from harm. In a practical sense, an activity is deemed to be safe if the perceived risks are judged to be acceptable. The Atomic Energy Act of 1954, as amended, establishes "adequate protection" as the standard of safety on which NRC regulation is based. In the context of NRC regulation, safety means avoiding undue risk or, stated another way, providing reasonable assurance of adequate protection for the public in connection with the use of source, byproduct and special nuclear materials.

While there is agreement on the need to maintain a safety focus, as discussed in Section II.C, disagreements may occur as to the *safety significance* of any particular violation. In the view of the NRC, a violation need not result in an *actual* impact to the public or to an employee (e.g., a release of radioactive material to the public or an employee overexposure to radiation) before it is considered significant. In resolving differing views on safety significance, considerations should include *all* aspects of safety significance as applied to enforcement, including the *actual safety consequence*, the *potential safety consequence*, and the *regulatory significance*. While NEI appears to recognize the safety significance of willful violations, NEI does not appear to recognize the safety significance of violations involving potential consequences, or other types of regulatory significance, such as programmatic breakdowns, repetitive violations, reporting failures, licensees' refusal to comply, and management involvement. As previously discussed in Section II.C of this report, the Enforcement Policy was modified on December 10, 1996, to clarify that technical significance includes both actual and potential consequences and that risk is an appropriate consideration in evaluating the technical significance of a violation.

The staff is concerned that when systems fail, margins of safety are reduced, and redundancy is lost, even when events do not occur. The enforcement program seeks compliance, actual consequences do not need to occur before there is a significant regulatory concern. If a valve is in an incorrect position, but the dependent system was not called upon to work, the issue is significant, although not as significant as if the system were called upon to work. The current guidance on severity levels reflects this. It is expected that licensed facilities operate by design within the regulatory envelope.

As noted in NUREG-1525, even with the emphasis on performance-based inspections, so-called "administrative" or "paper-work" violations are not necessarily minor in safety or regulatory significance. Many of the surveillance, quality control, and auditing systems on which both the NRC and the licensees rely (in order to monitor compliance with safety standards) are based primarily on complete, accurate, and timely recordkeeping and reporting. These requirements are necessary to provide evidence that systems will work when called upon.

As noted in the Commission-approved discussion on safety and compliance in the August 1997 SRM:

Safety is the fundamental regulatory objective, and compliance with NRC requirements plays a fundamental role in giving the NRC confidence that safety is being maintained. NRC requirements, including technical specifications, other license conditions, orders, and regulations, have been designed to ensure adequate protection--which corresponds to "no undue risk to public health and safety"--through acceptable design, construction, operation, maintenance, modification, and quality assurance measures. In the context of risk-informed regulation, compliance plays a very important role in ensuring that key assumptions used in underlying risk and engineering analyses remain valid.

Given the common misperception that safety significance is synonymous with actual consequence, the staff recommends that it provide additional enforcement guidance directing that correspondence transmitting escalated enforcement actions indicate whether the issue was safety significant because it represented an actual consequence, a potential consequence, or a regulatory concern (or a combination of these issues). Expressing safety significance in this context should help to improve the clarity of enforcement communications.

◆ *Conclusion*

The staff believes that the Enforcement Policy is appropriately structured to maintain a focus on safety. The staff recognizes, however, that there may be differing views on what constitutes "safety" and the nexus between safety and compliance. Therefore, in accordance with the Commission's direction in the August 25, 1997 SRM, the staff recommends that Section I of the Enforcement Policy be modified to include additional discussion (as appropriate) on the nexus between safety and compliance. The staff also recommends that additional enforcement guidance be issued that requires that correspondence transmitting escalated enforcement actions indicate whether the issue was safety significant because it represented an actual consequence, a potential consequence, or a regulatory concern (or a combination of these issues).

***F. Ensuring Enforcement Actions are Consistent With Regulatory Requirements***

◆ *Comments*

NEI commented that in some cases, NRC enforcement actions seem to be based upon new interpretations of regulatory requirements, not communicated to the licensee. NEI cited recent enforcement actions on FSAR design-basis issues, 10 CFR 50.59 implementation, and the maintenance rule, and suggested a need for improvement in NRC management reviews of cited violations to ensure that the NRC does not create new regulatory requirements through the enforcement process nor penalize licensees for violations based on previously unannounced interpretations.

◆ *Discussion*

The staff does not agree that enforcement actions are based on new interpretations. Licensees have the opportunity to challenge enforcement actions if they believe that new or inappropriate interpretations are being made without adequate notice. Considerable effort is made to ensure escalated enforcement actions are appropriate. This includes frequent contact with the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Materials Safety and Safeguards (NMSS) to ensure that enforcement actions reflect agency positions. In addition, to this end, NMSS has recently established the position of an NMSS Regional Program Coordinator whose duties include participation in and advise on materials enforcement activities in the regions and within NMSS. Further, more effort should be made to achieve better oversight of non-escalated enforcement actions. In this regard, all potential maintenance rule violations (regardless of potential severity level) are currently the subject of a multi-office review panel to ensure the appropriateness and consistency of enforcement actions in this area.

The staff recognizes the concerns in the area of 10 CFR 50.59 and is working on improving guidance in this area. All potential escalated actions based on 10 CFR 50.59 are subject to review by OE. The staff is establishing an OE and Office of Nuclear Reactor Regulation (NRR) review panel (like the maintenance rule panel) to ensure the appropriateness and consistency of all enforcement actions in this area.

Also, OE intends to establish a clearer process for challenging non-escalated enforcement actions (see the discussion in Section II.I.2 of this report).

◆ *Conclusion*

The staff does not believe that enforcement actions are being used to create new regulatory requirements. However, the staff is establishing a multi-office review panel for potential violations involving 10 CFR 50.59 and will provide a clearer path for headquarters review of challenges to enforcement actions.

**G. *Enforcement Correspondence***

◆ *Comments*

CORAR stated that any federal agency publication of licensee issues should be treated with high significance and care should be taken to ensure that the public has an accurate understanding of the severity of the issue. CORAR recommended that inspection reports include an explanation of the significance of each finding.

◆ *Discussion*

The significance of violations is reflected in the severity level categorizations that are given to violations, and these levels are defined and addressed in the Enforcement Policy (i.e., Section IV and

severity examples in the supplements, respectively). Notices of Violation include the severity level categorization after each violation included in the citation. Standard language for NCVs distinguishes minor violations from Severity Level IV violations by referencing the applicable section in the Enforcement Policy (i.e., Section IV for minor violations and Section VII.B.1 for Severity Level IV violations) to avoid confusion. Care is taken to ensure that the licensee and other audiences reading the correspondence understand the significance of issues. Correspondence will generally address the significance in terms of actual or potential consequence or regulatory significance.

However, as noted in Section II.E of this report, given the common misperception that safety significance is synonymous with actual consequence, the staff is recommending that it provide additional enforcement guidance directing that correspondence transmitting enforcement actions indicate whether the issue was safety significant because it represented an actual consequence, a potential consequence, or a regulatory concern (or a combination of these issues). Expressing safety significance in this context should help to improve the clarity of enforcement communications.

Because of the predecisional nature, inspection reports that include apparent violations (i.e., violations that may warrant escalated enforcement action) do not include safety significance conclusions. Instead, the report includes a discussion of the circumstances, such as whether or not an actual consequence occurred or a potential consequence existed. The conclusion on safety significance is reflected in the resulting enforcement action or in a close-out letter, in the absence of enforcement action.

The staff notes that "findings" that are not identified as violations or apparent violations are not subject to enforcement action. Enforcement guidance directs the staff to properly address and disposition noncompliances as noncompliances, not "findings." Noncompliances, as previously stated, include a discussion of significance.

Manual Chapter 0610, "Inspection Reports," in the NRC Inspection Manual provides additional guidance to the staff in addressing "findings" and providing context for significance (Sections 05.01.b and 05.02).

◆ *Conclusion*

While the current guidance for inspection and enforcement correspondence provides for addressing the safety significance and severity level of noncompliances, the staff recommends that enforcement guidance be expanded to require that the safety significance discussion for escalated enforcement actions address whether the issue represented an actual consequence, a potential consequence, or a regulatory concern (or a combination of the issues).

## *H. Licensee Responses to Notices of Violation*

### ◆ *Comments*

RUG IV suggested that the NRC encourage prompt licensee corrective actions through increased use of "no response required."

### ◆ *Discussion*

The Enforcement Policy was modified in 1995 to clarify that the NRC may waive all or portions of a licensee's written response to a Notice of Violation to the extent relevant information has already been provided to the NRC and is on the docket. This initiative allows the staff and licensees to channel resources to other, potentially significant issues. The staff has been implementing this option where appropriate.

### ◆ *Conclusion*

The staff supports the continuation of the practice of waiving a licensee's response to an NOV, where appropriate.

## *I. Non-Escalated Enforcement Actions*

This topic includes comments and discussion related to non-escalated enforcement actions, including, the need for increased oversight, the development of a formal appeals process, the opportunity to comment on non-escalated violations before they are issued, the "test" for minor violations, and Non-Cited Violations.

### **1. Increased Oversight**

#### ◆ *Comments*

To ensure uniform application of the Enforcement Policy between the NRC regional offices, RUG IV recommended increased oversight by OE and the Office for the Analysis and Evaluation of Operational Data (AEOD) of non-escalated enforcement actions.

#### ◆ *Discussion*

The staff recognizes that there have been some inconsistencies in the application of the Enforcement Policy in the area of non-escalated enforcement. The staff should focus more attention on oversight, guidance, and training in an effort to improve the consistency of non-escalated enforcement actions. The degree of effort for this task will be a function of the available resources. This is consistent with the agency's effort to increase the NRC's effectiveness.

AEOD currently assists OE in matters within its area of expertise, such as reporting requirements. From time to time, AEOD also provides enforcement-related insights to OE, such as in the development of additional guidance on severity levels. OE will continue to accept and request assistance from AEOD, when appropriate. In addition, with OE and AEOD reporting to the Deputy Executive Director for Regulatory Effectiveness, there is a greater opportunity for coordination and OE's ability to utilize AEOD's assistance.

◆ *Conclusion*

The staff should develop additional guidance, provide additional training, and perform audits to help improve the consistency in addressing non-escalated enforcement actions.

## **2. Development of Formal Appeals Process**

◆ *Comments*

RUG IV noted that the existing Enforcement Policy does not establish a formal process by which licensees may appeal non-escalated enforcement actions beyond the initial denial in the Reply to the Notice of Violation. RUG IV recommended that the Commission develop a formal non-escalated enforcement action appeals process.

◆ *Discussion*

The provisions of 10 CFR 2.201 (Notice of Violation) and the existing Enforcement Policy do not establish a formal process by which licensees may "appeal" either non-escalated or escalated enforcement actions that are proposed without civil penalties beyond the initial denial in the Reply to the Notice of Violation (NOV). The staff does, however, have guidance in the Enforcement Manual that provides for varying degrees of independent review for disputed NOV's.

With respect to non-escalated NOV's (i.e., including Severity Level IV violations), Section 4.2.5 of the Enforcement Manual provides that the region address licensees' responses to NOV's, including denials. OE is not routinely involved in evaluating licensees' responses. OE is normally notified if a licensee contests the violation on the basis of inconsistent application of the Enforcement Policy, if the response takes longer than 60 days to prepare, if there are significant differences within the regional staff or between the region and program office staffs, or if program office views are necessary to resolve a licensee's contention. OE does, however, evaluate a licensee's response in the event it makes a subsequent denial in reply to the region's response.

With respect to escalated NOV's (i.e., including Severity Level I, II, or III violations), guidance in Section 5.6.6 of the Enforcement Manual provides that the region coordinate its response to licensee disputes with OE.

While the staff does not believe that it would be appropriate to develop a formal appeals process for NOV's similar to the appeals process for civil penalties in 10 CFR 2.205, it may be appropriate for licensee denials to be subject to more independent review. The staff intends to provide additional agency review by having the evaluation of and response to *all* NOV disputes coordinated with OE.

As a final note, additional oversight in the non-escalated area should not only improve quality and consistency, but may reduce the number of disputes.

◆ *Conclusion*

The staff does not recommend that a formal appeals process for non-escalated enforcement actions be developed. Instead, processes should be established to provide for coordination of all NRC responses to disputes in cases involving NOV's proposed without civil penalties. Specifically, OE will modify the formats for NOV's to direct licensees to forward a copy of denials to the Director, OE and OE will modify the staff guidance in the Enforcement Manual to require all licensee denials to be coordinated with OE. The degree of OE review will be based on the circumstances of the case.

### **3. Opportunity to Respond to Apparent Violations and Draft Inspection Reports**

◆ *Comments*

CORAR recommended that licensees be provided the opportunity to review and respond to draft non-escalated enforcement actions and draft inspection reports (like potential escalated actions) before they are issued and placed in the Public Document Room. CORAR based this recommendation on the concern that non-escalated NOV's and inspection reports may include erroneous information that subsequently subjects licensees to unfair publicity. CORAR stated that the negativity is compounded because of the time delay to correct the inspection report and because of the public confusion when a second NOV is issued (i.e., the public may view it as an additional enforcement action versus a correction to a previous action).

◆ *Discussion*

Contrary to CORAR's understanding, the NRC does not issue inspection reports in draft form. Normally apparent violations that may warrant escalated enforcement action are addressed in inspection reports and issued to licensees. These inspection reports are public and are placed in the PDR when they are issued to the licensee. Licensees always have the opportunity to notify the agency when they believe that information in an inspection report is incorrect or inaccurate. In addition, all inspection reports are reviewed by a member of NRC management familiar with the NRC requirements in the area inspected before issuance.

The staff notes that not all inspections results are documented in inspection reports. In certain cases involving materials licensees, inspection field notes and NRC Form 591, "Safety Inspection" may be used. Form 591 summarizes the findings of the inspection related to radiation safety and may be

used to document Severity Level IV violations and serve as the official Notice of Violation. Some NRC inspectors are qualified to issue a Form 591 to a licensee at the time of the inspection exit without management review. However, Form 591s and accompanying field notes are reviewed by NRC management after an inspection is completed.

While the staff can appreciate CORAR's concern regarding the issuance of non-escalated enforcement actions that are subsequently revised, given the small percentage of times that this occurs, CORAR's concern does not outweigh the resource and timeliness considerations associated with CORAR's recommendation.

However, the staff agrees that issuance of an untimely inspection report correction or revised NOV can potentially mislead the public as a new issue. Therefore, OE intends to issue staff guidance in the Enforcement Manual that will require that revised NOVs clearly be identified in the subject line of the transmittal letter as such, i.e., "REVISED NOTICE OF VIOLATION."

◆ *Conclusion*

The staff does not believe that providing licensees an opportunity to respond to apparent violations for non-escalated enforcement actions is warranted. It will delay resolution of issues and increase the cost of enforcement with little benefit. Moreover, as noted in Section II.J of this report, the staff is reconsidering the recent practice of providing licensees the opportunity to respond to apparent violations in lieu of predecisional enforcement conferences. Finally, OE intends to issue guidance to help reduce the possible confusion when revised NOVs are issued.

#### **4. Minor Violations**

◆ *Comments*

CORAR recommended that minor violations not be published. CORAR based its recommendation on its view that the public does not distinguish between levels of violations and, by publishing minor violations, the NRC inadvertently fosters a public perception of unsafe facilities.

RUG IV recommended that the Commission amend the Enforcement Policy to allow minor violations to be discussed in inspection reports without escalation to an NCV. In addition, while RUG IV did not have a concern with the definition of a minor violation in the Enforcement Policy, RUG IV commented that the "test" in the Enforcement Manual for determining whether a violation was minor was overly subjective and that any violation could fail the test, i.e., every violation could be considered more than minor.

◆ *Discussion*

As previously addressed, Section IV of the Enforcement Policy provides that minor violations are **not usually documented in inspection reports**. However, there may be circumstances where it may be appropriate to document a minor violation for completeness or as part of the resolution of an allegation. If a minor violation warrants documentation, it should be recognized as a minor violation (as opposed to a "weakness," "licensee failure," or similar informal characterization). In these atypical cases, the existing policy is to note it as an NCV in accordance with *Section IV* of the Enforcement Policy (to ensure that readers understand that the violation is minor and not Severity Level IV). However, based on confusion between minor violations and NCVs, the staff, as noted below, is recommending a change to that policy.

The term "Non-Cited Violation" is defined in Section IV of the Enforcement Policy as "a violation that has not been formalized into a 10 CFR 2.201 Notice of Violation." The definition does not specify or qualify that the violation be any particular severity level. While the majority of NCVs that are issued are for Severity Level IV violations that meet the criteria for exercising discretion in accordance with Section VII.A.1 of the Enforcement Policy, NCVs may be used, as noted above, to disposition minor violations that warrant documentation. Therefore, contrary to RUG IV's view, minor violations that warrant documentation are not *escalated* to NCVs. Notwithstanding the appropriateness of dispositioning minor violations that warrant documentation as NCVs, the staff is proposing modifications to the Enforcement Policy to avoid possible confusion. Specifically, Section IV would be modified by deleting the footnote that includes the definition of an NCV (footnote 6) and by deleting the requirement that documented minor violations be noted as NCVs. Instead, the staff will use standard language such as, "This failure constitutes a violation of minor significance and is not subject to formal enforcement action."

Section 6.3.1.1 of the Enforcement Manual<sup>13</sup> provides guidance to the staff to help determine whether an issue is a minor violation. The determination of whether the violation is minor should consider the following questions:

- Does the violation have any actual impact (or any realistic potential for impact) on safety?
- Does the violation suggest a programmatic problem that could have a realistic potential safety or regulatory impact?
- Could the violation be viewed as the possible precursor to a significant event?
- If the violation recurred, would its recurrence be a more significant concern?
- If inadvertently left uncorrected, would this violation become a more significant safety and regulatory concern?
- Are there associated circumstances that add regulatory concern to this violation (e.g., apparent willfulness, licensee refusal to comply, management involvement, etc.)?

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<sup>13</sup> Consistent guidance exists in Manual Chapter 0610 of the Inspection Manual.

If the answer to all of these questions is "no," the violation should be considered a minor violation. If, on the other hand, the answer to any one of these questions is "yes," the violation should not be considered a minor violation.

The staff recognizes that there is considerable judgment in addressing these questions. However, elimination of these questions will not eliminate the differences in judgment on whether a violation is minor. These questions are a helpful tool and a starting point to aid the staff in determining whether a violation is minor. OE intends to develop additional guidance, conduct training, and perform audits to help improve the consistency in addressing these questions.

◆ *Conclusion*

The staff recommends that the existing policy of not normally documenting minor violations be continued and that the Enforcement Policy be modified such that minor violations no longer be dispositioned as NCVs. The staff also recommends that the existing questions in the Enforcement Manual be maintained as an aid for the staff in determining whether a violation is minor. OE intends to develop additional guidance, provide additional training, and perform audits to help improve the consistency in addressing minor violations.

## **5. Non-Cited Violations**

◆ *Comments*

Based on experience with the Enforcement Policy, modification on the use and guidance on the application of NCVs may be warranted. In addition, the current criteria for exercising the NCV discretion in Section VII.B.1, "Licensee-Identified Severity Level IV Violations" may warrant clarification.

◆ *Discussion*

As discussed in Section II.I.4 of this report, RUG IV mistakenly held the belief that minor violations that were documented in inspection reports were *escalated* to NCVs. Therefore, the staff is proposing modifications to the Enforcement Policy to avoid this confusion. In addition, OE has developed additional guidance for the staff to use to determine whether a Severity Level IV violation can be dispositioned as an NCV (Enforcement Guidance Memorandum (EGM) 97-012). An addendum to this EGM was issued that included a flowchart, similar to the civil penalty assessment flowchart. As stated before, the staff also intends to provide greater oversight of non-escalated actions, including use of NCVs.

Based on experience with the Enforcement Policy, the criterion in Section VII.B.1.a may warrant clarification to address licensee-identified Severity Level IV violations that are identified as a result of an event. On December 10, 1996, the Commission issued a revision to the Enforcement Policy (61 FR 65088) that included a modification to the criterion in Section VII.B.1.a. Specifically, the

phrase "including identification through an event" was deleted from the criterion that now simply reads, "It was identified by the licensee." The modification was intended to make it clear that use of discretion is not automatic if the violation is identified through an event. As stated in the previous paragraph, the staff issued additional guidance on dispositioning Severity Level IV violations as NCVs in EGM 97-012. This EGM states that credit for identification is not warranted when a licensee identifies a violation as a result of an event where the root 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. The EGM also stated that credit may be warranted if the licensee demonstrated initiative in identifying the violation's root cause. Therefore, consistent with the intent of the previous policy change and consistent with staff guidance and current practice, the criterion in Section VII.B.1.a should be modified to address that credit for identification is not warranted when a licensee identifies a violation as a result of an event where the root 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 and that credit may be warranted if the licensee demonstrated initiative in identifying the violation's root cause.

◆ *Conclusion*

The staff recommends that the Enforcement Policy be modified so that minor violations will no longer be dispositioned as NCVs. The staff also recommends that the criterion in Section VII.B.1.a be modified to address identification through an event. Specifically, a footnote should be added stating, "Discretion is not warranted when a licensee identifies a Severity Level IV violation as a result of an event where the root 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. Discretion may be warranted if the licensee demonstrated initiative in identifying the violation's root cause."

***J. Enforcement Options in Lieu Of Predecisional Enforcement Conferences***

◆ *Comment*

Based on experience with the Enforcement Policy, the provision in the Enforcement Policy that provides a licensee an opportunity to respond to an apparent violation described in an inspection report in lieu of a predecisional enforcement conference (Section V) may warrant modification. Specifically, the Policy may warrant revision to include an additional option in those situations where the staff concludes that it has sufficient information to make an enforcement decision without the need for a predecisional enforcement conference.

◆ *Discussion*

Prior to the 1995 Policy revision, the standard practice was to normally provide licensees an opportunity to discuss potential escalated violations (i.e., Severity Level I, II, or III violations) prior to the agency issuing an action by conducting an enforcement conference with the licensee. Given the expense of this practice (both for the NRC and licensees), the Policy was modified in 1995 to specify that conferences *only* be conducted if the agency requires additional information or the

licensee requests one. However, the Policy provided that licensees would normally be provided an opportunity to address the inspection report *prior* to issuance of escalated action, in those cases where the staff concluded that a conference was not necessary. The staff uses what it refers to as "choice letters" to provide licensees the choice of responding to apparent violations in inspection reports or requesting a conference before the NRC makes a final enforcement decision. Unfortunately, in many cases, this practice has decreased the efficiency of the enforcement process by increasing the cost and timeliness of issuing escalated actions without necessarily yielding a benefit.

For example, there have been many situations where the staff has had sufficient information (including the licensee's proposed corrective actions) to make an enforcement decision (such as issuing a Severity Level III violation without a civil penalty). Because of the predecisional nature of the correspondence transmitting the apparent violations, licensees do not appreciate that, with the given information of the case, the staff is not considering a civil penalty. Because of this lack of information, the staff believes that licensees have requested conferences solely in an effort to mitigate or eliminate civil penalties that the staff is not planning on issuing. In these situations, the staff honors the licensee's request and conducts a conference, only to subsequently issue an NOV that the licensee accepts. This type of situation represents an additional expenditure to both the NRC and licensee and delays the enforcement outcome without a clear benefit.

In cases where the licensee responds to the apparent violations and does not request a conference, the staff reviews the licensee's response and, provided its corrective actions appear appropriate, subsequently issues another letter to the licensee formalizing the apparent violations in an official NOV. Again, in this type of case, the staff basically duplicates its efforts and delays the enforcement outcome without a clear benefit.

In an effort to make the enforcement process more efficient (by reducing the number of conferences and reducing the workload of both the NRC and licensees), the staff recommends that when certain circumstances exist, an NOV should be issued for the licensee to respond to rather than responding to an apparent violation. This option might be appropriate in those escalated cases in which the staff: (1) has sufficient corrective action information from the licensee to decide on enforcement action, (2) sees no need for a predecisional enforcement conference to obtain further information prior to reaching an enforcement decision, and (3) has concluded that a civil penalty will not be proposed in the case unless the licensee fails to confirm the previously described corrective actions.

This approach would still: (1) provide licensees an opportunity to request a conference to dispute the action (although the staff believes that most licensees will not request a conference), (2) provide licensees an opportunity to dispute the action in writing through the provisions of 10 CFR 2.201 (like non-escalated violations), (3) allow the staff to conduct a conference where matters are disputed or where the licensee's documented corrective actions are not sufficiently prompt and comprehensive, and (4) provide for modification or rescission of the NOV, if appropriate.

Notwithstanding the previous discussion, the staff still recommends that the option of issuing "choice letters" be maintained. The staff believes that this option is still appropriate in certain circumstances. In particular, because of the differences in materials licensees' inspection frequencies and because NRC inspectors are not stationed at materials facilities (except for certain fuel cycle facilities), materials inspectors may not be aware of a materials licensee's corrective actions subsequent to the inspection exit. (This is in contrast to a reactor inspection where inspectors are more likely to be aware of corrective action information subsequent to the inspection exit because of the presence of resident inspectors.) Issuing a choice letter may be appropriate in cases like this where a materials licensee appears to understand the significance of the violation and the need for corrective action at the inspection exit. In these cases, the choice letter may provide the emphasis to the licensee to develop and implement comprehensive corrective actions to avoid the potential for a civil penalty. In fact, recognizing the importance of corrective action, the NRC staff prepared guidance that could be used to assist materials licensees in developing and implementing corrective action in response to violations. This guidance was issued in Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," on May 1, 1996. An excerpt from this Information Notice is included as an enclosure to choice letters.

◆ *Conclusion*

The staff recommends that Section V of the Enforcement Policy be revised to address two enforcement options if a predecisional enforcement conference is not held. The staff recommends that the existing Policy discussion stating that, "...the licensee *will normally* be requested to provide a written response to an inspection report..." be modified to state, "...the licensee *may* be requested..." to indicate this approach as one enforcement option. The staff recommends that Section V be further modified to address another enforcement option by stating, "However, if the NRC has sufficient information to conclude that a civil penalty is not warranted, it may proceed to issue an enforcement action without first obtaining the licensee's response to the inspection report."

**K. *Civil Penalty Assessment Process***

**1. *Adjustment to Base Civil Penalty Table 1A***

◆ *Comments*

Based on experience with the Policy, modifications to the base civil penalties in Table 1A may be warranted. First, the table should be modified to address large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material. Second, the table should be modified to include additional guidance to address how other large and small materials users should be categorized. Finally, the base civil penalty for certain fuel cycle facilities should be increased based on the relative safety and safeguards risks among the different types of fuel facilities.

◆ *Discussion*

As to the first issue, the staff has identified what appears to be an administrative oversight in publication of the 1995 Enforcement Policy revision. Specifically, prior to the revision, Table 1A included a footnote that indicated that large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material were considered as industrial processors. This footnote was not included in Table 1A in the *Federal Register* notice for the 1995 Enforcement Policy revision. This footnote (footnote 1) was included in the table in Section II.D.7.c of NUREG-1525 (page II.D-39). This footnote (which included an additional sentence indicating that safeguards violations for this category would be at a base penalty of \$100,000) was also included in the table in the draft *Federal Register* notice that the Commission approved for publication based on SECY-95-084. The SRM did not direct the staff to modify or delete the footnote. However, subsequent to the Commission's approval, the staff recognized that the second sentence of the footnote was included in error. Namely, it was inconsistent with the staff's position addressed in Section II.D.7.c of NUREG-1525 (page II.D-39) and in SECY-95-084 (page 3) that the base civil penalty amount for safeguards violations should be the same as for other violations at these facilities, i.e., \$25,000. It appears that when the second sentence was deleted, that footnote 1 was inadvertently deleted in its entirety.

Second, the table should be modified to provide more guidance in determining which category other large and small material users should be considered under. The staff recognizes that each category in Table 1A contains a range of licensees, differing individually by size, scope of licensed activities, quantity and type of licensed material, number of employees, number of work locations, and financial assets. As noted in NUREG-1525, the staff believes that no simple classification system will individually account for each of these variables. As with current policy and practice, the NRC should take into account the gravity of the violation and the licensee's ability to pay. If, for a given licensee, Table 1A does not appropriately reflect these factors, the NRC should consider increasing or decreasing the amount as necessary. Consistent with this approach, the staff recommends that "other large material users" should be included in category "c" and "other small material users" should be added to category "d."

With respect to the third issue, the staff believes that the base civil penalty for certain fuel cycle facilities should be increased, commensurate with the relative safety and safeguards risks among the different type of fuel cycle facilities. The staff is currently developing this issue in a separate Commission paper. In addition, this issue was briefly addressed in the staff's recommendations regarding civil penalty assessments for gaseous diffusion plants in SECY-96-258, dated December 19, 1996.

◆ *Conclusion*

The staff recommends that Table 1A be modified to include the footnote that recognizes large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material as industrial processors and to include "other large material users" in category "c" and "other small material users" in category "d." Table 1A may also warrant revision in the future depending on the

Commission's decision on the staff's recommendation to increase the base civil penalty amounts for certain fuel cycle facilities.

## **2. Initial Escalated Action**

### ◆ *Comments*

NEI recommended that the first decisional point in the civil penalty assessment process be modified to exempt only prior, non-willful escalated actions *in the same functional area*. NEI based this recommendation on its view that the effect of setting the scope of past violations so wide, together with the complexity of nuclear plant operations and the voluminous and detailed regulatory requirements, make it a near certainty that credit will be withheld because of a past violation. Despite the overall sustained good performance of most licensees, NEI stated that the plant-wide reach of this factor prevents the enforcement process from recognizing that good performance.

### ◆ *Discussion*

The first decisional point in the civil penalty assessment process currently states that when the NRC determines that a non-willful Severity Level 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 two inspections, whichever is longer, the NRC will consider whether the licensee's corrective action for the present violation is reasonably prompt and comprehensive. In designing this strategy, the objectives were to simplify the previous process, give more weight to current performance than past performance, and, at the same time, maintain the flexibility to consider particularly poor or particularly good performance.

In the past, the Enforcement Policy allowed escalation or mitigation up to 100% of the base civil penalty based on the licensee's overall performance *and* performance specifically related to the area of the violation. Because of the broad scope and range of the "Licensee Performance" factor, including the range ( $\pm 100\%$ ) for discretion, consistent implementation was difficult, such as when a violation involved overlapping functional areas.

With regard to the second objective, even if a licensee's past performance has been poor, as characterized by having previous escalated enforcement action, if the licensee's *current* performance is characterized by self-identifying and promptly, comprehensively correcting the violation, a civil penalty would not normally be proposed. In other words, if a licensee is truly a good performer, even if it has had an enforcement action in a different activity area, it would not be subject to a civil penalty because it would have identified and corrected the current violation.

It is noted that there are many different types of activities at a given licensed facility. For example, at a reactor facility, these include activities associated with (but not limited to), operations, design, maintenance, health physics, chemistry, safeguards, fitness-for-duty, quality assurance, and

discrimination issues. Under NEI's approach, escalated action could be taken in each area before the factor of identification is considered.

Nevertheless, the staff recognizes that there may be some situations where there is little relationship between cases, such as a discrimination case and an old design issue. The Enforcement Policy provides the staff with the flexibility to exercise discretion in special circumstances to ensure that the resulting enforcement action is appropriate for the circumstances of the particular case.

Finally, the staff notes that Section VII.B.6 specifically recognizes that mitigation may be appropriate where the overall sustained performance of the licensee has been particularly good. In addition, Section VII.A.1 of the Enforcement Policy specifically recognizes that escalation may be appropriate where the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation.

◆ *Conclusion*

The staff believes that the first decisional block in the civil penalty assessment process is appropriately structured in considering past enforcement actions, regardless of activity area.

### **3. Incentives for Identification and Corrective Action**

◆ *Comments*

NEI recommended that the NRC reduce civil penalty outcomes in the revised civil penalty assessment formula so that meaningful credit is awarded for self-identification or corrective action -- rather than simply withholding escalated penalties. NEI recognized that under the current process, if a licensee self-identifies and corrects a violation, a civil penalty would not normally be issued. However, NEI stated that the current civil penalty assessment process fails to provide positive incentives for achievement of either objective individually. NEI recommended that if the licensee achieves either objective (self-identification or corrective action), it should receive a 50% reduction in the civil penalty. If both results are achieved, no civil penalty should issue. But, if the licensee fails to achieve both objectives, it receives the full base penalty -- 100%.

◆ *Discussion*

The current civil penalty assessment process is not limited to the consideration of two factors, identification and corrective action. Instead, the assessment process (graphically represented in Section 7 of Appendix A) considers *four* decisional points, involving past performance, identification, corrective action, and those issues that may warrant exercising enforcement discretion.

In making its recommendation, NEI overlooks the importance of the first decisional point in the assessment process. The first decisional point addresses whether the violation is the first escalated enforcement action that the licensee has had during the past 2 years or past two inspections. If the licensee has not had any past escalated actions, the assessment process then addresses the promptness and comprehensiveness of the licensee's corrective actions and then whether there are special circumstances that may warrant discretion. In this scenario, the issue of identification is not considered. In other words, even if the NRC identified the violation, this strategy is designed to provide flexibility for licensees who have traditionally been good performers. This strategy also places a premium on corrective action.

On the other hand, if a licensee has had past escalated actions, the process addresses whether the licensee should be given credit for actions related to identification and corrective actions and then whether there are special circumstances that may warrant discretion. In this scenario, the staff believes a base civil penalty is appropriate if the licensee only warrants credit for either self-identification or corrective action because the process reflects that the licensee has had a history of escalated action. However, even if a licensee has had a history of past actions, under the assessment process, a licensee would not normally be subject to a civil penalty if it identified and corrected the current violation. As stated before, this strategy gives more weight to the licensee's current performance.

◆ *Conclusion*

The staff believes the current civil penalty assessment process is appropriately structured to reflect issues the agency believes are appropriate to consider in assessing whether a civil penalty should be proposed, i.e., past performance, identification, corrective action, and those that may warrant exercising enforcement discretion (i.e., VII.A.1 and VII.B.6).

#### **4. Standards for Corrective Action**

◆ *Comments*

NEI recommended that the NRC clarify the standard for corrective action credit in the civil penalty assessment process. NEI claimed that what constitutes "prompt and comprehensive" corrective action in the current policy is ill-defined, subjective, and detracts from predictable implementation of the process. NEI also claimed that credit for corrective action is often not given because of this

lack of clarity. NEI recommended that credit be given for corrective actions, that, when implemented, restore regulatory compliance.

◆ *Discussion*

Given the complexity and variety of nuclear activities subject to nuclear regulation, it would be implausible to establish standards for corrective action for each type of noncompliance. Instead, Section VI.B.2.c of the current Enforcement Policy establishes a goal for corrective action; namely that the corrective actions will promptly restore compliance and will be appropriately comprehensive to prevent occurrence of violations with similar root causes.

The Policy also provides considerable guidance in assessing the factor, such as consideration of the timeliness of the corrective action, the adequacy of the root cause analysis, the comprehensiveness of the corrective action (given the significance and the complexity of the violation), and whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive action. Recognizing the importance of corrective action, the NRC staff prepared guidance that could be used to assist materials licensees in developing and implementing corrective action in response to violations. This guidance was issued in Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," on May 1, 1996.

The staff disagrees with NEI's view that credit should be given for corrective actions that merely restore compliance with requirements. Obviously a valve must be returned to the correct position. However, it is necessary to determine *why* the valve was in the incorrect position so that lasting corrective actions can be developed and achieved. A general tenet of the Enforcement Policy is that it be used as a deterrent to prevent future violations. This requires a root cause analysis. Therefore, the staff believes it is appropriate to expect corrective actions to be sufficiently comprehensive, given the significance and complexity of the violations, to prevent occurrence of violations with similar causes. Finally, the staff notes that credit is given in the majority of cases subjected to the civil penalty assessment process<sup>14</sup>. In addition, in those cases when credit is not provided, the enforcement correspondence generally explains the basis for not providing credit, such as addressing other actions that could have been taken, or that the NRC had to take action to focus the licensee's actions.

◆ *Conclusion*

The staff believes the current discussion in the Enforcement Policy for providing corrective action credit in the civil penalty assessment process is sufficient and that credit for corrective action should continue to be dependent on both actions to restore compliance and actions to prevent recurrence.

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<sup>14</sup> The Office of Enforcement Annual Report for Fiscal Year 1996 indicated that licensees were given credit for corrective actions in approximately 85% of cases subjected to the civil penalty assessment process. (See page 33 of the report.)

## 5. Mandatory Civil Penalties

### ◆ *Comments*

UCS commented that the Enforcement Policy should produce consistent enforcement actions, and to that end, recommended that the Enforcement Policy be modified to eliminate what it viewed as subjective enforcement based on performance issues. In particular, UCS recommended that the staff consistently impose a civil penalty every time a licensee fails to meet a requirement, regardless of a licensee's performance or ability to meet requirements in other areas. (The staff assumed that UCS was directing this recommendation at those violations that would currently be subjected to civil penalties, i.e., Severity Level I, II, or III violations.) UCS took the position that civil penalties are necessary to remedy deficiencies. Without a civil penalty, UCS stated that the deficiency may remain uncorrected or resources withheld or deferred.

### ◆ *Discussion*

The staff agrees that consistency is an important element in maintaining a credible and effective enforcement program. Automatically issuing a civil penalty for every Severity Level I, II, or III violation would certainly make the Enforcement Policy consistent. However, the staff believes that an enforcement approach that strikes the proper balance between deterrence and incentives is consistent with the overarching goals of the program, namely that enforcement be used as a deterrent to emphasize the importance of compliance with requirements and to encourage prompt identification and prompt, comprehensive correction of violations.<sup>15</sup> Safety is furthered when licensees have incentives to identify and correct violations. If every violation resulted in the same sanction, regardless of the circumstances and the licensee's response to it, the civil penalty merely becomes a penalty and loses its remedial focus. The staff believes that the revisions made to simplify the Enforcement Policy, especially those associated with the civil penalty assessment process, have helped to produce more consistent and predictable enforcement actions.

Notwithstanding the importance of consistency, the staff does not believe that the Enforcement Policy should be reduced to a formula for rigid application. Few cases are entirely straightforward, and the NRC must always apply judgment in determining whether to give credit for the licensee's actions. Despite years of industry experience, new types of cases frequently arise, and in some cases, strict application of the Policy could result in delivering an inappropriate regulatory message. As stated in Section III of the Enforcement Policy, "...the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of violations and the appropriate sanctions,..."

In addition, the staff does not agree that civil penalties are necessary to remedy deficiencies. Once a licensee has been put on notice that a violation exists that requires corrective action, the agency *requires* that corrective actions be taken to restore compliance. Failure to take necessary corrective actions to restore safety and compliance could result in the agency taking more significant

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<sup>15</sup> From Section I of the Enforcement Policy, NUREG-1600.

enforcement action, such as issuing larger civil penalties or issuing an order that could modify, suspend, or revoke a license. Further, an intentional failure to take corrective actions consistent with those described in the licensee's response to the violation (i.e., pursuant to the provisions of 10 CFR 2.201) could subject the licensee to more significant civil enforcement action, and possible criminal sanctions.

Not only does the staff disagree that civil penalties are necessary to remedy deficiencies, the staff believes that the provisions in the Enforcement Policy for allowing mitigation for corrective actions provides incentives for developing and implementing better corrective actions.

◆ *Conclusion*

The staff believes that the changes to the Enforcement Policy in 1995 helped to improve the predictability and consistency of enforcement actions, while maintaining the agency's desire to use enforcement sanctions for providing appropriate incentives and deterrence to further the public health and safety. The staff will continue to improve its efforts at consistency, but does not believe that more rigidity in the civil penalty assessment process is warranted.

**L. Exercise of Enforcement Discretion**

◆ *Comments*

Although the revised civil penalty assessment process has improved the predictability of civil penalty outcomes, NEI commented that the process does not always reflect the safety significance of the violation and that consequently, the staff has resorted to exercising discretion more often in accordance with Section VII of the Enforcement Policy to send an appropriate regulatory message.

NEI also recommended that the NRC reexamine and refine the current examples in Section VII.B of the Policy addressing mitigation of enforcement sanctions. NEI based this recommendation on its view that the current civil penalty assessment process lacks an effective mechanism to sharpen the regulatory message and that the examples in Section VII.B were crafted well before the revision to the civil penalty assessment process. NEI suggested that mitigation be considered if a licensee is able to meet the majority of the criteria for exercising the particular discretion in Section VII.B. NEI also recommended that the criteria for exercising discretion be re-evaluated for consistency with the objectives of the Enforcement Policy. NEI took the position that the requirement for NRC concurrence for plant restart in Section VII.B.2 (Violations Identified During Extended Shutdowns or Work Stoppages) furthers no legitimate objective of the Enforcement Policy.

As discussed in Section II.L.5 of this report, UCS also recommended that the Policy be modified by eliminating the flexibility to exercise enforcement discretion based on performance issues.

Finally, based on experience with the Enforcement Policy, the applicability of Section VII.B may warrant modification to include Severity Level IV violations.

◆ *Discussion*

Prior to 1995, the civil penalty assessment process in the Enforcement Policy included the consideration of six separate factors that could collectively allow a total range of reductions up to 200% subtracted from the base civil penalty amount or increases up to 500% above the base civil penalty. The complexity of the previous process sometimes resulted in trying to send multiple messages within the issuance of a single sanction. The 1995 Review Team believed that this could at times result in each part of the regulatory message being diluted, or could send a mixed message as to what the NRC finds to be most important. Therefore, in considering changes to the civil penalty assessment strategy, the Review Team gave particular attention to simplifying the process in a manner that would increase clarity, minimizing the number and complexity of decision points while preserving the desired emphases of the existing Policy.

The staff believes that the revised civil penalty assessment process has resulted in a more predictable, understandable process. However, the staff recognizes that in simplifying the assessment process, there will be situations in which the outcome does not reflect the appropriate regulatory message. Therefore, NEI is correct to a certain extent, that the NRC has exercised discretion in the adjustment of civil penalties more in the current civil penalty assessment process than in the past. The staff believes that this is acceptable, in that issues that are important to the agency are being considered. However, instead of these issues automatically being considered as part of the process (similar to the past Policy), these issues may be considered after application of the normal process. The staff notes that it has exercised this type of discretion (i.e., increasing or decreasing the civil penalty amount) in approximately 16% of the cases issued during Fiscal Year 1996.<sup>16</sup>

The staff believes that the current civil penalty assessment process is appropriately structured to take mitigating factors into consideration, such as a licensee's good past performance (reflected in the first decisional block), and a licensee's initiative in identifying and comprehensively correcting violations. However, the staff recognizes that there may be additional circumstances of a case that warrant exercising discretion. Therefore, the Enforcement Policy provides flexibility through VII.B.6 (Violations Involving Special Circumstances). Unlike the other examples in Section VII.B, this example does not include specific or limiting criteria for its application, other than the stated expectation that it only be exercised where application of the normal guidance in the Policy is unwarranted. Therefore, the staff believes that Section VII.B.6 provides the staff with sufficient flexibility to ensure that the resulting enforcement decision is appropriate for the circumstances of the case and reflects the appropriate regulatory message. However, the staff does believe that the discussion in VII.B.6 should be modified to include additional factors for the staff to consider, such as whether the regulatory requirement that was violated was clear, or given the staff's current information, appropriate.

The staff also believes that the existing criteria in the remaining examples in Section VII.B are appropriate. The staff does not agree that mitigation should be routinely considered, notwithstanding

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<sup>16</sup> From the Office of Enforcement's Annual Report for Fiscal Year 1996, page 33.

the licensee's inability to meet all of the criteria. In circumstances where a case does not warrant discretion under Sections VII.B.2, VII.B.3, VII.B.4, or VII.B.5, the staff may still consider discretion appropriate under Section VII.B.6. Again, as noted elsewhere in this report, enforcement by its nature requires the exercise of discretion and judgment.

The staff does not agree with NEI's view that the requirement for NRC concurrence for plant restart in Section VII.B.2 (Violations Identified During Extended Shutdowns or Work Stoppages) furthers no legitimate objective of the Enforcement Policy. The purpose of the NRC enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. The applicability criteria for Section VII.B.2 include situations in which (1) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee, or (2) the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time. Either of these situations represent a significant regulatory concern based on performance issues. As the federal agency tasked with ensuring that civilian uses of nuclear materials and facilities are conducted in a manner consistent with public health and safety, the NRC has a responsibility to ensure that it is satisfied that a licensee's corrective actions are acceptable before restart. This provision is not only acceptable, but necessary, because in these situations, the agency is not receiving the normal documentation of corrective actions that it would receive if the agency were issuing an enforcement action.

Finally, in reviewing Section VII.B, it may be appropriate to modify some of the examples to include Severity Level IV violations. The examples in Section VII.B address Severity Level II or III violations.<sup>17</sup> However, if the staff believes that the circumstances of a particular case may warrant discretion at Severity Level II, or III, then it would be logical to believe that discretion may be appropriate at Severity Level IV. Therefore, Sections VII.B.3, VII.B.4, and VII.B.6 should be modified to reflect that these examples of discretion are applicable for Severity Level IV violations. For example, discretion is warranted when a licensee identifies a violation as part of corrective action from a previous violation, or for an old design issue, or for an unclear requirement.

◆ *Conclusions*

The staff believes that the current civil penalty assessment process takes appropriate mitigating circumstances into account. The staff believes that the provisions of Section VII.B provide the staff with the necessary flexibility to ensure that resulting enforcement decisions are consistent with the overall goals of the enforcement program. The staff believes that Section VII.B.6 should be modified to include additional factors for consideration, including whether the regulatory requirement that was violated was clear, or given the staff's current information, appropriate. The staff also believes that Sections VII.B.3, VII.B.4, and VII.B.6 should be modified to make the provisions for discretion applicable to Severity Level IV violations.

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<sup>17</sup> The staff has applied enforcement discretion in accordance with Section VII.B.6 to Severity Level IV violations.

**M. Public Communications Involving Enforcement**◆ *Comment*

NEI recommended that the NRC issue press releases in connection with enforcement actions *only after* the agency has made a final enforcement action decision. NEI took the position that multiple press releases in the course of the enforcement process (such as announcing a conference, and then subsequently announcing the issuance of a civil penalty) do not further the objectives of the Enforcement Policy and erode public confidence in the regulatory process.

NEI also recommended that press releases issued at the end of the enforcement process carefully put the matter into context with respect to the safety significance of the violation and that press releases should indicate whether licensees had reported the issue that was the subject of the enforcement action.<sup>18</sup>

RUG IV recommended that to improve overall safety, the NRC develop a process where potentially generic non-escalated enforcement issues are promptly identified and disseminated (including a discussion of the NRC's assessment of safety/regulatory consequence or concern). RUG IV suggested that NRC Bulletin, Information Notice, and Administrative Letter Processes appear to be an appropriate communication vehicle to promptly inform all licensees of enforcement actions (escalated and non-escalated) that may have generic applicability.

◆ *Discussion*

The effect of publicity was discussed at length during the 1995 enforcement program reassessment. The Review Team recommended to the Commission that the NRC maintain its current practice of conducting enforcement in the public eye, including issuing press releases for proposed impositions of civil penalties. However, the Review Team recommended that the practice of routinely issuing press releases to announce open conferences be discontinued to be consistent with other agency practices. In particular, the Review Team noted that press releases are normally issued (and appropriate) for issuance of significant agency actions. However, the Review Team's view was that conferences are not in and of themselves significant agency actions, but rather predecisional to what may later result in a significant agency action. Further, the Review Team noted that press releases are not routinely issued for other open meetings. Instead, the Review Team recommended that press releases be issued only when specific issues exist that the agency believes are of sufficient interest to the public.

The Commission did not approve the Review Team's recommendation. The Commission believed that it was important to continue the practice of conducting the agency's business in an open manner and providing the public with the fullest information practicable on its activities. However, the Commission was sensitive to the concern that conferences were not being viewed in a predecisional

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<sup>18</sup> NEI informally communicated its recommendation involving reporting during a public meeting with the NRC.

nature. Therefore, in the June 16, 1995 SRM, the Commission directed the staff to ensure that press releases for open conferences include standard language that acknowledges and emphasizes the predecisional nature of the meeting, and note that the apparent violations being discussed are subject to review and may change prior to any resulting enforcement action.

The use of press releases to announce open conferences was again considered as part of the decisional process for the trial program for conducting open predecisional enforcement conferences. In SECY-96-222, dated October 22, 1996, the staff recommended that: (1) the Enforcement Policy be modified to provide that most conferences be open to public observation and (2) the Office of Public Affairs exercise discretion and issue press releases based on whether it believed open predecisional conferences were of sufficient interest to the public. The staff stated that given the experience in issuing press releases<sup>19</sup> and the continued emphasis of the agency in the area of openness, it no longer objected to the use of brief press releases to announce open conferences. NEI has not provided sufficient basis to change the staff's position.

The staff agrees that press releases issued at the end of the enforcement process should attempt to put the matter into context with respect to the safety significance of the violation. As a first step, the staff believes that public communications should include the severity level categorization in terms of the Enforcement Policy's definitions. Second, as previously discussed in Section II.E of this report, the staff will provide additional enforcement guidance directing that correspondence transmitting escalated enforcement actions indicate whether the issue was safety significant because it represented an actual consequence, a potential consequence, or a regulatory concern. Addressing safety significance in this context in public communications is appropriate to help inform without unnecessarily alarming the public (since many significant enforcement actions do not involve an actual consequence, such as a safety system failing to operate when actually called upon to work). The staff also agrees that press releases should indicate whether a licensee reported the issue that is the subject of the enforcement action and is modifying internal guidance to reflect this.

With regard to RUG IV's recommendation involving dissemination of potentially generic non-escalated enforcement information, the staff appreciates the value of assessing lessons learned in the enforcement program, including lessons from non-escalated enforcement actions. This is an area the staff should consider. However, the staff notes that the underlying issues associated with many non-escalated violations are frequently addressed in Information Notices, even though the violations are not escalated.

As a final note on this issue, OE announces all predecisional enforcement conferences on OE's home page on the Internet. OE also includes escalated enforcement actions on the Internet, as well as enforcement information, such as the Enforcement Policy and the [NRC Enforcement Manual](#).

◆ *Conclusion*

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<sup>19</sup> The staff found that most press releases issued subsequent to the June 1995 SRM were brief in announcing the public conference and were carefully worded to ensure that they did not prejudice the outcome and become a penalty in themselves.

The staff believes that the use of press releases to announce open predecisional enforcement conferences is appropriate (provided that press releases are brief and carefully worded to reflect the predecisional nature of the conference). The staff recommends that press releases for escalated enforcement actions put safety significance into context by discussing the severity level categorization and by addressing whether the issue reflects an actual or potential consequence, or a regulatory concern. The staff agrees that press releases for enforcement actions should indicate whether the licensee reported the issue that was the subject of the violation. Finally, the staff notes that the underlying issues associated with many non-escalated enforcement actions are already be addressed through NRC generic communications. However, the staff should consider additional methods for communicating enforcement-related information, including non-escalated enforcement actions.

#### ***N. Violations Involving Transportation***

##### **◆ *Comments***

In reviewing the Policy, the examples for violations based on radiation exposures included in Supplement V (Transportation) and Supplement IV (Health Physics) appear inconsistent.

##### **◆ *Discussion***

With respect to safety significance of individual violations, the staff notes that the Supplements to the Enforcement Policy, that provide examples in eight activity areas to assist in categorizing the significance of violations, are based on different thresholds. Section IV of the Policy, (Severity of Violations), provides that comparison of significance between activities areas are inappropriate. As an example, the Policy states that Severity I examples in Reactor Operations (Supplement I) are not directly comparable to Severity I examples in Reactor Construction (Supplement II). The same can be said for the examples in Transportation (Supplement V) and Health Physics (Supplement IV), though both of these supplements categorize violations that involve exposure to members of the public. For example, under Supplement IV, a violation involving an exposure to a member of the public of 150 millirems would be categorized at Severity Level III. However, under Supplement V, the violation could be categorized at Severity Level I.

The differences in categorization between activity areas reflects the varying degrees of significance of the particular violations based on either actual or potential consequences or regulatory significance. Significance is discussed in Sections II.C and II.E above. One reason for differences in treatment of violations in the Transportation and Health Physics supplements, is the concern that transportation failures, particularly for Type B packages, may result in unshielded and uncontrolled material being released into the public domain.<sup>20</sup> However, a violation not associated with

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<sup>20</sup> In 1992 (57 FR 5791), the Commission modified the Transportation supplement to emphasize the significance of transportation violations by providing examples at Severity Level I and II where there is a clear potential for

transportation could have a similar result, in which case, the Policy would suggest a different level of significance.

◆ *Conclusion*

The staff should consider whether changes to the severity levels in Supplements IV and V for violations of similar consequence are warranted as it completes its review of the Enforcement Policy Supplements.

**O. *Violations Involving Discrimination***

◆ *Comments*

In reviewing the Policy, modifications to certain examples of violations involving discrimination included in Supplement VII (Miscellaneous Matters), may be warranted.

◆ *Discussion*

The examples in Supplement VII used to help categorize the severity levels of violations associated with discrimination are generally based on management levels. By the Policy, management is viewed at three levels. It is recognized that there are many different types of management structures and the individual job titles a particular company may use is not necessarily controlling in determining the appropriate severity level categorization. In practice, Severity Level I is senior management, generally at the corporate level; Severity Level II is middle-management, generally at the plant management level; and Severity Level III has been low-level management and first-line supervisors. The Severity Level II example (B.4), specifically addresses plant management *above* first-line supervisors. However, consistent with the focus on three basic levels as described above, the staff has interpreted this example over the years to apply to middle to upper management, not simply any level above first-line supervision. This is consistent with the description in NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," January 1994, that stated that Severity Level I and II violations are "important because higher level supervisors clearly set the attitude towards safety and compliance; presumably, the higher the

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members of the public to receive exposures in excess of .1 rems, the limit for an exposure to a member of the public. As noted by the Commission in explaining these changes, "[T]he purpose of transportation requirements is to prevent unshielded radioactive material from getting into the public domain. When that happens, there is a clear potential for a very significant exposure, and, therefore it is considered a violation of very significant regulatory concern." These violations are of concern because they generally require not only packaging errors, but also loading and handling failures resulting in actual or potential unnecessary exposure to the public. The actual exposure level under these circumstances is a function of time and distance from the source.

position, the greater the sphere of influence, with the resulting increased potential for a chilling effect if discrimination is practiced at this level."<sup>21</sup> In the staff's view, discrimination caused by supervisors above first-line supervision, but still relatively low in the management chain, are appropriately classified at Severity Level III. Clearly, such discrimination is of significant concern, but is not as significant as discrimination by higher level management. Thus, the staff would modify example B.4 to be action by plant management or other mid-level management. This would be consistent with the change to NRC Management Directive 8.8, "Management of Allegations," for a high priority discrimination investigation proposed in SECY 97-147 (July 14, 1997), that the Commission approved in an SRM dated September 10, 1997. Similarly, example C.4 should be modified to address actions of first-line supervisors and other low-level management.

◆ *Conclusion*

Examples B.4 and C.4 of Supplement VII (Miscellaneous Matters) should be modified to reflect current practice. Specifically, example B.4 should state, "An action by plant management *or mid-level management* in violation of 10 CFR 50.7 or similar regulations against an employee." Example C.4 should state, "An action by first-line supervision *or other low-level management* in violation of 10 CFR 50.7 or similar regulations against an employee."

**P. *Timeliness of Enforcement Actions***

◆ *Comments*

UCS recommended that the Enforcement Policy be reviewed with a goal of improving the timeliness for enforcement actions. UCS stated that it believed that untimely enforcement actions unfairly subject licensees to unfavorable attention long after the causal event when the licensee may be far along its recovery paths.

◆ *Discussion*

The NRC recognizes the concerns expressed about timeliness of enforcement actions. The agency continues to work to make improvements in this area. The majority of enforcement cases are dispositioned in less than 90 days. However, enforcement cases involving team inspections (e.g., Augmented Inspection Teams, Incident Inspection Teams, design inspections, maintenance inspections, etc.), Office of Investigations (OI) reports, and cases involving complex, novel, or generic issues often take longer to process. It should be noted that significant cases, especially those requiring exercise of enforcement discretion and/or Commission consultation, take time to process properly. In addition, many of the concerns about timeliness are related to cases involving wrongdoing. OI is making progress in improving the timeliness of its investigations. In some cases, delay of NRC enforcement actions is caused by the necessary time for the Department of Justice

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<sup>21</sup> NUREG-1499, page II.C-12.

(DOJ) to reach decisions on whether to prosecute cases as provided for in the Memorandum of Understanding between the NRC and DOJ.

The staff is also mindful that a failure to take the necessary time to properly develop and coordinate an enforcement action may result in a greater impact if inappropriate decisions are made.

Finally, in light of competing priorities and resource considerations within the agency, this area will always require management attention and emphasis.

◆ *Conclusion*

While the agency must continue emphasis on timeliness of significant enforcement actions, the staff does not believe that timeliness should be improved at the expense of weakening the quality of fact-finding, evaluation, and decision-making.



### *III. Conclusions and Recommendations*

#### *Conclusions*

The staff concludes that the changes to the Enforcement Policy in 1995 (especially in the civil penalty assessment process) have helped to improve the predictability and consistency of enforcement actions, while maintaining the agency's desire to use enforcement sanctions for providing appropriate emphasis and deterrence in a way that helps to support the agency's overall safety mission. This conclusion is reflected in several aspects of the Enforcement Policy and the enforcement program:

- ◆ The current Enforcement Policy is appropriately geared toward creating deterrence (i.e., taking action in a manner that provides incentives to identify and correct violations that have occurred and discourage future violations) and is properly structured for nuclear regulation.
- ◆ The Enforcement Policy recognizes that violations have varying degrees of safety significance, and that in considering the significance of a violation, it is appropriate to consider the technical significance (i.e., actual and potential consequences) and the regulatory significance. In addition, risk is an appropriate consideration in evaluating the technical significance of a violation.
- ◆ The Enforcement Policy is appropriately structured to maintain a focus on safety.
- ◆ The current civil penalty assessment process is appropriately structured to reflect issues the agency believes are appropriate to consider in assessing whether a civil penalty should be proposed, i.e., past performance, identification, corrective action, and those warranting discretion.
- ◆ The use of discretion and judgment throughout the deliberative process recognizes that enforcement of NRC requirements does not lend itself to mechanistic treatment.
- ◆ The strides to improve the timeliness of significant enforcement actions should not be made at the expense of weakening the quality of fact-finding, evaluation, and decision-making.

***Recommendations***

The staff recommends:

1. That additional guidance and training be provided to the staff to help determine the safety significance and severity levels of violations. In particular, OE should continue its efforts to complete the review of the Enforcement Policy supplements. In addition, greater management oversight should be considered in cases based on regulatory significance, especially those involving programmatic issues. (II.C)<sup>22</sup>
2. That inspection and enforcement guidance should be considered when new rules are developed and implemented. (II.D)
3. That Section I of the Enforcement Policy be modified (consistent with the Commission's direction in the August 25, 1997 SRM) to include additional discussion on the nexus between safety and compliance. (II.E)
4. That additional enforcement guidance be developed that directs that correspondence transmitting escalated enforcement actions indicate whether the issue was safety significant because it represented an actual consequence, a potential consequence, or a regulatory concern (or a combination of these issues). (II.E)
5. That OE develop additional guidance, provide additional training, and perform audits to help improve the consistency in addressing non-escalated enforcement actions. (II.I.1)
6. That all non-escalated NOV's that are disputed by licensees be subject to more independent review. Specifically, OE should modify the formats for NOV's to direct licensees to forward a copy of disputes to the Director, OE, and OE should modify the staff guidance in the Enforcement Manual to require licensee denials to be coordinated with OE. The degree of OE review will be based on the circumstances of the case. (II.I.2)
7. That OE issue guidance to clarify correspondence when revised NOV's are issued. (II.I.3)
8. That the existing policy and practice of not normally documenting minor violations be continued. (II.I.4)

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<sup>22</sup> This refers to the section of the report where the recommendation was made.

9. That the Enforcement Policy be modified such that minor violations are no longer dispositioned as NCVs. Instead, standard language should be used, such as, "This failure constitutes a violation of minor significance and is not subject to formal enforcement action." Consistent with this recommendation, Section IV of the Enforcement Policy be modified by deleting the footnote that includes the definition of an NCV (footnote 6). (II.I.4)
10. That OE develop additional guidance, provide additional training, and perform audits to help improve the consistency in addressing minor violations. (II.I.4)
11. That the criterion in Section VII.B.1.a of the Enforcement Policy be modified to address identification through an event. Specifically, a footnote should be added stating, "Discretion is not warranted when a licensee identifies a Severity Level IV violation as a result of an event where the root 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. Discretion may be warranted if the licensee demonstrated initiative in identifying the violation's root cause." (II.I.5)
12. That Section V of the Enforcement Policy be revised to address two enforcement options if a predecisional enforcement conference is not held. The existing Policy discussion stating that, "...the licensee *will normally* be requested to provide a written response to an inspection report..." should be modified to state, "...the licensee *may* be requested..." to indicate this approach as one enforcement option. Section V should be further modified to address another enforcement option by stating, "However, if the NRC has sufficient information to conclude that a civil penalty is not warranted, it may proceed to issue an enforcement action without first obtaining the licensee's response to the inspection report." (II.J)
13. That Table 1A of the Enforcement Policy be modified to include the footnote that recognizes large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material as industrial processors and include "other large material users" in category "c" and "other small materials users" in category "d." (II.K.1)
14. That Table 1A of the Enforcement Policy be modified to include "other large material users" in category "c" and "other small material users" in category "d." (II.K.1)
15. That Sections VII.B.3, VII.B.4, and VII.B.6 of the Enforcement Policy be modified to make the provisions for discretion applicable to Severity Level IV violations. (II.L)
16. That Section VII.B.6 of the Enforcement Policy be modified to include additional factors for consideration, including whether the regulatory requirement that was violated was clear, or given the staff's current information, appropriate. (II.L)

17. That press releases for escalated enforcement actions put safety significance into context by discussing the severity level categorization and by addressing whether the issue reflects an actual or potential consequence, or a regulatory concern. (II.M)
18. That press releases for enforcement actions should indicate whether the licensee reported the issue that was the subject of the violation. (II.M)
19. That the staff consider whether changes to the severity levels in Supplements IV and V for violations of similar consequence are warranted as it completes its review of the Enforcement Policy supplements. (II.N)
20. That example B.4 in Supplement VII of the Enforcement Policy be revised to state, "An action by plant management or mid-level management in violation of 10 CFR 50.7 or similar regulations against an employee," and that example C.4 be revised to state, "An action by first-line supervision or other low-level management in violation of 10 CFR 50.7 or similar regulations against an employee." (II.O)

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## APPENDIX A

### *Summary of Enforcement Policy Revision*

This Appendix provides a summary description of the more significant changes adopted by the Commission (as they appear in the June 30, 1995 Enforcement Policy).

#### **1. *Clarified Purpose***

The purpose statement was revised to clarify that enforcement be used (1) as a deterrent to emphasize the importance of compliance with requirements, and (2) to encourage prompt identification and prompt, comprehensive correction of violations.

#### **2. *Elimination of Severity Level V Categorization***

Severity Level V violations were eliminated. The examples at that level were withdrawn from the supplements. Formal enforcement actions will now only be taken for violations categorized at Severity Level I to IV to better focus the inspection and enforcement process on safety. To the extent that minor violations are described in an inspection report, they will be labeled as Non-Cited Violations (NCVs). When a licensee does not take corrective action or repeatedly or willfully commits a minor violation such that a formal response would be needed, the violation should be categorized at least at a Severity Level IV.

#### **3. *Threshold and Criteria for Predecisional Enforcement Conferences***

Enforcement conferences were renamed "predecisional enforcement conferences," to emphasize their predecisional nature. These conferences should be held for the purpose of obtaining information to assist the NRC in making enforcement decisions when the agency reasonably expects that escalated enforcement actions will result. They should also normally be held if requested by a licensee. In addition, they should normally be held before issuing an order or a civil penalty to an unlicensed individual.

#### **4. *Responses to Notices of Violation***

The Enforcement Policy was modified to clarify that the NRC may waive all or portions of a licensee's written response to a Notice of Violation to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report and is on the applicable docket in the NRC Public Document Room.

## 5. *Revision of Base Civil Penalty Tables*

Tables 1A and 1B were revised.

Table 1A was simplified to combine categories of licensees with the same base penalty amounts. The base penalty amounts have generally remained unchanged. The revised Policy notes that the base penalties may be adjusted on a case-by-case basis to reflect the ability to pay and the gravity of the violation. 10 CFR Part 35 licensees (doctors, nuclear pharmacies, and other medical related licensees) are combined into an overall medical category, based on the similarity of hazards. Because transportation violations for all licensees are primarily concerned with the potential for personnel exposure to radiation, the violations in this area will be treated the same as those in the health physics area.

The \$100,000 base civil penalty amount for safeguards violations, which applies to only two categories of licensees, fuel fabricators and independent fuel and monitored retrievable storage installations, has been deleted. The penalty amount for safeguards should be the same as for other violations at these facilities. The NRC has not had significant safeguards violations at these facilities. If the penalty that would normally be assessed for operational violations is not adequate to address the circumstances of the violation, then discretion would be used to determine the appropriate penalty amount.

The base civil penalty for "other" materials licensees, previously set at \$1000, was increased to \$5000. The primary concerns for these licensed activities are individual radiation exposure and loss of control of material to the environment, both of which warrant a more financially meaningful penalty. A \$500 civil penalty for a Severity Level III violation (at 50% of the Severity Level I base amount) does not reflect the seriousness of this type of violation for this category of licensee. It is noted that with the revised assessment approach, these licensees will not normally receive a civil penalty if prompt and comprehensive corrective action is taken for isolated non-willful Severity level III violations.

In Table 1B, the percentage for Severity Level IV violations was deleted since such violations will not be subject to civil penalties. If a violation that would otherwise be categorized at a Severity Level IV violation merits a civil penalty because of its significance, the violation would normally be categorized at a Severity Level III.

## 6. *Elimination of Civil Penalties for Severity Level IV Violations*

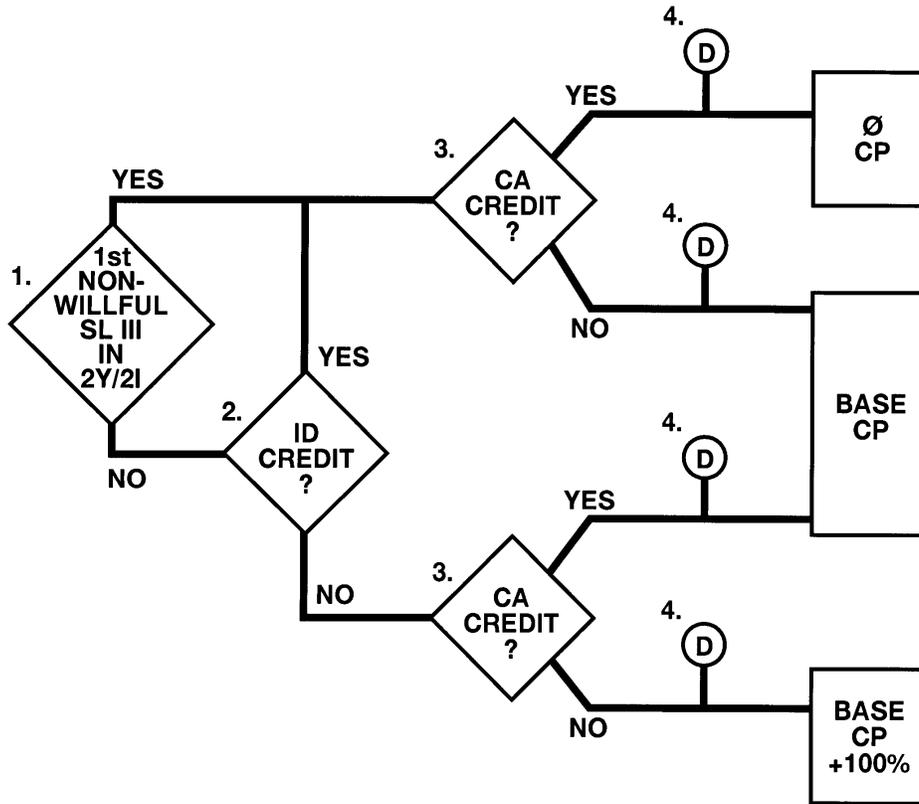
The practice of considering civil penalties for certain Severity Level IV violations was discontinued. If repetitiveness or other justification exists for a civil penalty, then the Severity Level IV violation may legitimately be raised to Severity Level III.

**7. *Streamlined Civil Penalty Assessment Process***

The revised process is intended to:

- Continue to emphasize compliance in a manner that deters future violations;
- Encourage prompt identification and prompt, comprehensive correction of violations and their root causes;
- Apply the recognition of good past performance to give credit to a licensee committing a non-willful SL III violation who has had no previous significant violations during the past 2 years or 2 inspections (whichever is longer);
- Place greater attention on situations of greater concern (i.e., where a licensee has had more than one significant violation in a 2-year or two-inspection period, where corrective action is less than prompt and comprehensive, or where egregious circumstances, such as where it is clear that repetitiveness or willfulness, are involved);
- Streamline the NRC decisional process in a manner that will preserve judgment and discretion, but will provide a clear normative standard and produce relatively predictable results for routine cases; and
- Provide clear guidance on applying fewer adjustment factors in various types of cases, in order to increase consistency and predictability.

The flow chart presented on the next page is a graphic representation of the civil penalty assessment process.



Once a violation has been categorized at a Severity Level III or above, the assessment process considers these decisional points:

1. Is this the first non-willful Severity Level III enforcement action (regardless of the activity area) for this site that the licensee has had during the past 2 years or past 2 inspections (whichever is longer)?
2. Should the licensee be given credit for actions related to identification? (Only consider if the answer to question 1 is no.)
3. Are the licensee’s corrective actions prompt and comprehensive?
4. In view of all the circumstances, does the matter in question require the exercise of discretion?

As described in the Enforcement Policy, each of these decisional points may have several associated considerations for any given case. However, the outcome of a case, absent the exercise of discretion, is limited to three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100%.

**8. *Preservation of the Ability to Exercise Discretion***

The ability to exercise discretion was preserved with the revised Policy. Discretion is provided to deviate from the normal approach to either increase or decrease sanctions where necessary to ensure that the sanction reflects the significance of the circumstances and conveys the appropriate regulatory message. The Enforcement Policy was modified to provide examples where it is appropriate to consider civil penalties or escalate civil penalties notwithstanding the normal assessment process in Section VI of the Enforcement Policy. One significant example to note involves the loss of a source. This example was added to emphasize the importance of licensees being aware of the location of their sources and to recognize that there should not be an economic advantage for inappropriate disposal or transfer. Finally, Table 2, "Examples of Progressions of Escalated Enforcement Actions for Similar Violations in the Same Activity Area Under the Same License," was withdrawn from the Enforcement Policy. The guidance in that table was no longer needed because the policy is clear that each case should be judged on its own merits, especially those repetitive violation cases to which the table applied.



## APPENDIX B

### *Summary of Changes to the Enforcement Policy Since June 30, 1995*

This Appendix provides a summary description of the changes that have been made to the Enforcement Policy subsequent to June 30, 1995.

#### **1. *October 11, 1996: Adjustment of Civil Monetary Penalties (61 FR 53557)***

On September 27, 1996, the Commission approved amending the regulations to adjust the maximum amounts of civil penalties under statutes within the jurisdiction of the NRC. The changes were mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The Commission also approved conforming changes to the Enforcement Policy such that the maximum penalty amount was increased to \$110,000 per violation per day and the civil penalty amounts in Table 1A were increased by 10%. These changes were subsequently published in the *Federal Register* on October 11, 1996, and were effective on November 12, 1996.

#### **2. *October 18, 1996: Departures From the FSAR (61 FR 54461)***

On October 18, 1996, the Commission published revisions to the Enforcement Policy to address departures from the FSAR in violation of 10 CFR 50.59 and for failures to update the FSAR in violation of 10 CFR 50.71(e). The revision provides more guidance in categorizing violations by severity level and more guidance concerning the effect of corrective action, reporting requirements, and old design issues. The changes are intended to encourage licensees to voluntarily take the initiative to identify and correct FSAR discrepancies that might be identified through current surveillance and quality assurance activities.

#### **3. *December 10, 1996: Commission Consultation; Open Predecisional Enforcement Conferences; NCVs; Risk (61 FR 65088)***

On December 10, 1996, the Commission published revisions to the Enforcement Policy that addressed four issues. The first modification revised the list of enforcement matters on which the NRC staff must consult with the Commission. Based on the staff's experience in implementing the Policy and the rarity of occasions when the Commission deviated from staff recommendations, Section III of the Policy was modified to reduce the number of situations on which the staff must consult with the Commission prior to taking action. The second modification revised the Policy to provide that most predecisional enforcement conferences will be open to public observation. The decision to modify Section V of the Policy came at the end of a trial program that began on July 10, 1992, that provided for conducting approximately 25 percent of all conferences open for public observation. The third modification clarified the circumstances in which a licensee-identified violation will be treated as a Non-Cited Violation. The criterion in Section VII.B.1(a) was modified by deleting the reference to licensee-identification through an event to make it clear that use of discretion is not automatic if the violation is identified through an event. The fourth modification included additional guidance that stated that risk was an appropriate consideration in developing enforcement sanctions. Section IV was modified to state that in considering the significance of a violation, that risk is an appropriate consideration. Section VII.A.1(e) was also modified to state that exercise of discretion should be considered in situations where the violation has resulted in

substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase.

**4. December 10, 1996: Part 20, Exceedance of Dose Constraints (61 FR 65128)**

On December 10, 1996, the Commission published a revision to the Enforcement Policy that reflected the Commission's final rule amending 10 CFR Part 20 to add § 20.1101(d), that establishes the requirements for reporting and taking corrective action. Supplement IV of the Policy was modified to add an example of a violation categorized at Severity Level IV involving the failure to report an exceedance of the dose constraint established in § 20.1101(d), or failure to take corrective action for an exceedance.

**5. December 26, 1996: Correction to Exercise of Discretion (61 FR 68070)**

On December 26, 1996, the Commission published a correction to the revision of the Enforcement Policy that was published on December 10, 1996, involving Commission consultation. This correction modified Section VII to reflect the appropriate policy as to notification to the Commission when the staff exercised discretion in enforcement matters.

**6. February 12, 1997: Gaseous Diffusion Plants; NRC Organizational Changes; Commission Consultation (62 FR 06677)**

On February 12, 1997, the Commission published revisions to the Enforcement Policy that were consistent with the Commission's final rule amending regulations governing Gaseous Diffusion Plants (GDPs). Table 1A was modified to add GDPs to category "a," such that the base civil penalty for a Severity Level I violation at a GDP would be \$110,000 and Supplement VI was modified to provide additional examples for categorizing severity levels of violations. In addition, the Policy was amended to reflect recent NRC organizational changes. The changes redesignate which NRC officials are delegated the responsibility for performing certain enforcement functions. Section III was modified to clarify that Commission consultation was appropriate if the staff proposed to impose a civil penalty for *a single violation or problem* that is greater than 3 times the Severity Level I value shown in Table 1A for that class of licensee.

**7. March 24, 1997: Participation in Predecisional Enforcement Conferences Involving Discrimination (62 FR 13906)**

On March 24, 1997, the Commission published revisions to the Enforcement Policy regarding predecisional enforcement conferences that are based on findings of discrimination. For appropriate cases, the revision allows some degree of participation by the complainant in the predecisional enforcement conference.

**8. May 28, 1997: Part 34, Radiography, Examples of Potential Violations (62 FR 28974)**

On May 28, 1997, the Commission published revisions to the Enforcement Policy that were consistent with the Commission's final rule amending 10 CFR Part 34. Supplement VI of the Policy was revised to add examples for categorizing the significance of violations of 10 CFR Part 34, Licensees for Radiography and Radiation Safety Requirements for Radiographic Operations.

**9. June 19, 1997: Editorial Corrections (62 FR 33447)**

On June 19, 1997, the Commission published a correction to the revision of the Enforcement Policy that was published on May 28, 1997, involving examples of violations of 10 CFR Part 34. The correction was necessary to correct paragraph numbering and removing unnecessary language.

**10. October 8, 1997: Clarification on Release of OI Reports Associated With Conferences Involving Discrimination and Role of the Complainant (62 FR 52577)**

On October 8, 1997, the Commission published a revision to the Enforcement Policy that clarified the procedures associated with predecisional enforcement conferences based on reports of the NRC Office of Investigations (OI) associated with discrimination. On March 24, 1997, the Commission published changes to the Enforcement Policy concerning predecisional conferences based on discrimination. Consistent with the Statement of Consideration for those changes, Section V of the Policy was modified to reflect that the OI report *may* be made public. Also, additional language was added to clarify that the purpose of the complainant's participation in a conference is to provide information to the NRC to assist the staff in its deliberations.

**NUCLEAR REGULATORY COMMISSION**

**(NUREG-1600, Rev.1)**

**NRC Enforcement Policy**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy Statement: revision.

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**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing a complete revision of the agency's Enforcement Policy (NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions") based on (1) a 2-year review of the revised Enforcement Policy, that was effective June 30, 1995, and (2) a consolidation of changes to the Enforcement Policy since June 30, 1995.

**DATES:** This action is effective [date of publication in the *Federal Register*], while comments are being received. Submit comments on or before (45 days after publication in the *Federal Register*).

**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 Pike, 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, (301) 415-2741.

**SUPPLEMENTARY INFORMATION:**

On June 30, 1995, the Commission published a complete revision of the NRC's Enforcement Policy (60 FR 34381). The changes to the Enforcement Policy resulted from the efforts of a review team established in 1994 to assess the NRC's enforcement program. The review team published its recommendations in NUREG-1525, "Assessment of the NRC Enforcement Program," and the Commission made revisions to the Enforcement Policy after considering those recommendations. The revisions to the Enforcement Policy were intended to, among other things:

- Emphasize the importance of identifying problems before events occur, and of taking prompt, comprehensive corrective action when problems are identified;
- Direct agency attention at licensees with multiple enforcement actions in a relatively short period; and
- Focus on current performance of licensees.

The revisions to the Enforcement Policy were also intended to better focus the inspection and enforcement process on safety, provide greater incentives for strong self-monitoring and corrective action programs in the civil penalty assessment process, provide more predictability and consistency in the civil penalty assessment process, and to better convey clear regulatory messages.

When the Commission published the revised Enforcement Policy in the *Federal Register* on June 30, 1995, it stated that it would provide the public an opportunity to comment on the revised Enforcement Policy after it had been in effect for about 18 months. On February 5, 1997 (62 FR 5495), the Commission published an opportunity for the public to comment on the revised Enforcement Policy.

The NRC has reviewed approximately 2 years of experience under the revised Enforcement Policy and considered public comments. The NRC staff prepared a report (NUREG-1622,<sup>23</sup> "NRC Enforcement Policy Review: July 1995 - July 1997," November 1997) that concluded that the changes made to the Enforcement Policy in 1995 (especially in the civil penalty assessment process) have helped to improve the predictability and consistency of enforcement actions, while maintaining the agency's desire to use enforcement sanctions for providing appropriate emphasis and deterrence in a way that helps to support the agency's overall safety mission. This conclusion is reflected in several aspects of the Enforcement Policy:

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<sup>23</sup> Copies of NUREG-1622 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001. The report is also included on the NRC's Office of Enforcement's homepage on the Internet at [www.nrc.gov/OE/](http://www.nrc.gov/OE/).

- The current Enforcement Policy is appropriately geared toward creating deterrence (i.e., taking action in a manner that provides incentives to identify and correct violations that have occurred and discourage future violations) and is properly structured for nuclear regulation.
- The Enforcement Policy recognizes that violations have varying degrees of safety significance, and that in considering the significance of a violation, it is appropriate to consider the technical significance (i.e., actual and potential consequences) and the regulatory significance. In addition, risk is an appropriate consideration in evaluating the technical significance of a violation.
- The Enforcement Policy is appropriately structured to maintain a focus on safety.
- The current civil penalty assessment process is appropriately structured to reflect issues the agency believes are appropriate to consider in assessing whether a civil penalty should be proposed, i.e., past performance, identification, corrective action, and those warranting discretion.
- The use of discretion and judgment throughout the deliberative process recognizes that enforcement of NRC requirements does not lend itself to mechanistic treatment.

Notwithstanding the general satisfaction with the Enforcement Policy, the review included a number of recommendations to the Commission for revisions to the Enforcement Policy and for development of additional enforcement guidance. The Commission is issuing this policy statement after considering those recommendations and the bases for them in NUREG-1622.

The more significant changes to the Enforcement Policy (in the order that they appear in the Policy) are described below:

## **I. Introduction and Purpose**

This section has been modified to include a brief discussion on the meaning of "safety" and "compliance" as they are used in the context of this policy statement. This section also references a new appendix (Appendix A) that describes the nexus between safety and compliance.

## **III. Responsibilities**

This section has been modified to reflect that the Chief Financial Officer (CFO) is delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees. The Office of the Chief Financial Officer (OCFO) was created as part of the NRC's January 5, 1997, reorganization. The Office of the Controller has now been incorporated into the OCFO and the position of the Director, Office of the Controller (previously identified in the policy as having the issuing authority), has been subsumed by the CFO.

This section has also been modified to emphasize that the technical *and regulatory* significance of violations are considered in conjunction with the principles of the policy statement and the surrounding circumstances when the agency determines the appropriate enforcement strategy.

This section has also been revised to indicate that the Commission is to be provided notification (where appropriate, based on the uniqueness or significance of the issue) for a plant

meeting the criteria of Section VII.B.6 (mitigation for violations involving special circumstances). This is consistent with the policy revision to Section VII issued on December 26, 1996 (61 FR 68070).

#### **IV. Severity of Violations**

This section has been modified such that minor violations will no longer be noted as Non-Cited Violations (NCVs) when they are documented in inspection reports. Instead, if a minor violation warrants documentation, it will be noted as a violation of minor significance that is not subject to formal enforcement action. The definition of an NCV included in footnote 6 has also been deleted. The purpose of these changes is to avoid confusion between minor violations dispositioned as NCVs in accordance with Section IV and Severity Level IV violations dispositioned as NCVs in accordance with Section VII.B.1, "Licensee-Identified Severity Level IV Violations." Use of the term "NCV" will now be reserved for those Severity Level IV violations that meet the criteria for discretion in Section VII.B.1.

#### **V. Predecisional Enforcement Conferences**

This section has been modified to indicate that a predecisional enforcement conference is not required if the NRC has sufficient information to make an informed enforcement decision. If a conference is not held, the licensee *may* be requested to provide a written response to an inspection report as to the licensee's views on the apparent violations and their root causes and a description of

planned or implemented corrective actions. (The previous discussion indicated that the licensee *will normally* be requested to provide a written response.) It is the NRC's intent that this approach will normally be taken in the event a civil penalty is under consideration. This section has also been modified to include an additional option when a conference is not held, such that the NRC may proceed to issue an enforcement action without first obtaining the licensee's response to the inspection report, if the NRC has sufficient information to conclude that a civil penalty is not warranted. This approach would still: (1) provide licensees an opportunity to request a conference to dispute the action, (2) provide licensees an opportunity to dispute the action in writing through the provisions of 10 CFR 2.201 (as with any Notice of Violation), (3) allow the NRC to conduct a conference where matters are disputed or where the licensee's documented corrective actions are not sufficiently prompt and comprehensive, and (4) provide for modification or rescission of the NOV, if appropriate.

It should be noted that these modifications are not meant to be construed as exclusive enforcement options. In other words, it does not change the existing practice whereby the NRC may choose to issue an enforcement action (including civil penalties and orders) without conducting a conference. These changes are being made in an effort to make the enforcement process more efficient (by reducing the number of conferences and reducing the workload of both the NRC and licensees and improving the timeliness of enforcement actions).

## **VI. Enforcement Actions**

This general discussion of the NRC's philosophy and approach to taking enforcement has been modified by including the recognition that circumstances regarding a violation may warrant discretion such that the NRC may refrain from issuing a Notice of Violation or other enforcement action. This discussion was previously included in Section VI.A, "Notice of Violation," and has been more appropriately relocated to this section.

#### *A. Notice of Violation*

The NRC has had a long-standing policy that licensees are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that are not avoidable by reasonable licensee quality assurance measures or management controls. This discussion has been deleted from this section and more appropriately included in the discussion on mitigation of sanctions in Section VII.B.6, "Violations Involving Special Circumstances."

#### *B. Civil Penalty*

##### 1. Base Civil Penalty

Table 1A has been revised to correct the inadvertent omission of a footnote that indicates that large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material be considered as industrial processors. Table 1A had included this footnote prior to the 1995 policy revision and this footnote was included in the table in the draft *Federal Register* notice that the

Commission approved for publication and in the table in Section II.D.7.c of NUREG-1525. Table 1A has also been revised to include additional guidance in determining which category material users should be considered under by including "other large material users" in category "c" and "other small materials users" in category "d."

## **VII. Exercise of Discretion**

### *B. Mitigation of Enforcement Sanctions*

Section VII.B.1, "Licensee-Identified Severity Level IV Violations," is being modified to address licensee-identified violations that are identified as a result of an event. On December 10, 1996 (61 FR 65088), the Commission issued a revision to the Enforcement Policy that included a modification to the criterion in Section VII.B.1.a. Specifically, the phrase "including identification through an event" was deleted from the criterion. The modification was intended to make it clear that use of discretion is not automatic if the violation is identified through an event. A footnote is being included to the criterion to address how the NRC will normally consider violations that are identified as a result of an event.

The Commission recognizes that there may be particular circumstances in a case where discretion is warranted and the NRC should refrain from issuing enforcement action. Sections VII.B.3, VII.B.4, and VII.B.6 of the Enforcement Policy provide that discretion may be warranted for certain Severity Level II and III violations. If the circumstances of a particular case may warrant discretion at Severity Level II or III, then discretion may also be appropriate at Severity Level IV. Therefore, changes have been made to the examples to reflect that the NRC may choose to refrain from issuing a Notice of Violation for a Severity Level IV violation.

Section VII.B.6 was also modified to include additional factors for consideration, including whether the regulatory requirement that was violated was clear, or given the NRC's current information, appropriate. As previously addressed, this section also includes that the NRC may refrain from issuing enforcement action for violations resulting from matters beyond a licensee's control. However, licensees are generally responsible for the actions of its employees. The revised text, consistent with long-standing NRC interpretation, makes it clear that licensees are also responsible for the actions of their contractors.

#### **Appendix A: Safety and Compliance**

This appendix has been added to address the NRC's philosophy on the nexus between safety and compliance.

#### **Appendix B: Supplements - Violation Examples**

This appendix was administratively created as a result of the addition of Appendix A and includes the previous guidance included in the Supplements section of the policy.

#### **Supplement VII - Miscellaneous Matters**

Examples B.4 and C.4 have been revised to reflect NRC practice in applying Severity Level II and III categorization for violations involving discrimination. In particular, Severity Level II categorization is appropriate for discriminatory acts by middle to upper management, not simply any level *above* first-line supervision. Severity Level III categorization is appropriate for low-level supervision and management, even if they are above a first-line supervisor.

#### Paperwork Reduction Act

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### 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 of OMB.

Accordingly, the NRC Enforcement Policy is revised to read as follows:

## **GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS**

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## **PREFACE**

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission (NRC or Commission) and the NRC staff (staff) in initiating enforcement actions, and of the presiding officers and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment.<sup>1</sup> This statement of general policy and procedure will be published as NUREG-1600 to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as appropriate under the circumstances of a particular case.

## **I. INTRODUCTION AND PURPOSE**

The purpose of the NRC enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. Consistent with that purpose, enforcement action should be used:

- As a deterrent to emphasize the importance of compliance with requirements, and

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<sup>1</sup> Antitrust enforcement matters will be dealt with on a case-by-case basis.

- To encourage prompt identification and prompt, comprehensive correction of violations.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees, vendors<sup>2</sup>, contractors, and their employees, who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects.<sup>3</sup> Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of this enforcement policy. In no case, however, will licensees who cannot achieve and maintain adequate levels of safety be permitted to conduct licensed activities.

For purposes of this policy statement, safety means avoiding undue risk, i.e., providing reasonable assurance of adequate protection for the public in connection with the use of source, byproduct and special nuclear materials. Compliance means meeting regulatory requirements. Appendix A to this policy statement describes the nexus between safety and compliance.

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<sup>2</sup> The term "vendor" as used in this policy means a supplier of products or services to be used in an NRC-licensed facility or activity.

<sup>3</sup> This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. Therefore, the term "licensee" is used throughout the policy. However, in those cases where the NRC determines that it is appropriate to take enforcement action against a non-licensee or individual, the guidance in this policy will be used, as applicable. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

## II. STATUTORY AUTHORITY AND PROCEDURAL FRAMEWORK

### *A. Statutory Authority*

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes the NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes the NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes the NRC to impose civil penalties not to exceed \$100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes the NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes the NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Notwithstanding the \$100,000 limit stated in the Atomic Energy Act, the Commission may impose higher civil penalties as provided by the Debt Collection Improvement Act of 1996. Under the Act, the Commission is required to modify civil monetary penalties to reflect inflation. The adjusted maximum civil penalty amount is reflected in 10 CFR 2.205 and this Policy Statement.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

#### *B. Procedural Framework*

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The licensee or other person is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the response, the civil penalty may be mitigated, remitted, or imposed. An opportunity is provided for a hearing if a civil penalty is imposed. If a civil penalty is not paid following a hearing or if a hearing is not requested, the matter may be referred to the U.S. Department of Justice to institute a civil action in District Court.

The procedure for issuing an order to institute a proceeding 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 is set forth in 10 CFR 2.202. The licensee or any other person adversely affected by the order may request a hearing. The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful. Section 2.204 sets out the procedures for issuing a Demand for Information (Demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The Demand does not provide hearing rights, as only information is being sought. A licensee must answer a Demand. An unlicensed person may

answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

### **III. RESPONSIBILITIES**

The Executive Director for Operations (EDO) and the principal enforcement officer of the NRC, the Deputy Executive Director for Regulatory Effectiveness, hereafter referred to as the Deputy Executive Director, has been delegated the authority to approve or issue all escalated enforcement actions.<sup>4</sup> The Deputy Executive Director is responsible to the EDO for the NRC enforcement program. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement program. The Director, OE, acts for the Deputy Executive Director in enforcement matters in his absence or as delegated.

Subject to the oversight and direction of OE, and with the approval of the Deputy Executive Director, where necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities. Enforcement orders are normally issued by the Deputy Executive Director or the Director, OE. However, orders may also be issued by the EDO, especially those involving the

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<sup>4</sup> The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The Chief Financial Officer has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees.

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, 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 technical and regulatory significance of the violations and the surrounding circumstances.

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, "Exercise of Enforcement Discretion." The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will also be provided notice the first time that discretion is exercised for a plant meeting the criteria of Section VII.B.2. The Commission is also to be provided notification (where appropriate, based on the uniqueness or significance of the issue) for a plant meeting the criteria of Section VII.B.6. In addition, the Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

- (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 with 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 Severity Level I value shown in Table 1A for that class of licensee;
- (3) Any proposed enforcement action that involves a Severity Level I violation;
- (4) Any action the EDO believes warrants Commission involvement;
- (5) Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and
- (6) Any proposed enforcement action on which the Commission asks to be consulted.

#### **IV. SEVERITY OF VIOLATIONS**

Regulatory requirements<sup>5</sup> have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement process. In considering the significance of a violation, the staff considers the technical significance, i.e., actual and potential consequences, and the regulatory significance. In evaluating the technical significance, risk is an appropriate consideration.

Consequently, for purposes of formal enforcement action, violations are normally categorized in terms of four levels of severity to show their relative importance within each of the following eight activity areas:

- I. Reactor Operations;
- II. Facility Construction;
- III. Safeguards;
- IV. Health Physics;
- V. Transportation;
- VI. Fuel Cycle and Materials Operations;
- VII. Miscellaneous Matters; and
- VIII. Emergency Preparedness.

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<sup>5</sup> The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

Licensed activities will be placed in the activity area most suitable in light of the particular violation involved including activities not directly covered by one of the above listed areas, e.g., export license activities. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level IV violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant regulatory concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern.

The Commission recognizes that there are other violations of minor safety or environmental concern which are below the level of significance of Severity Level IV violations. These minor violations are not the subject of formal enforcement action and are not usually described in inspection reports. To the extent such violations are described, they will be noted as violations of minor significance that are not subject to formal enforcement action.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

Supplements I through VIII provide examples and serve as guidance in determining the appropriate severity level for violations in each of the eight activity areas. However, the examples are neither exhaustive nor controlling. In addition, these examples do not create new requirements. Each is designed to illustrate the significance that the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

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 best suited to the significance of the particular violation. In some cases, special circumstances may warrant an adjustment to the severity level categorization.

#### *A. Aggregation of Violations*

A group of Severity Level IV violations may be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations have the same underlying cause or programmatic deficiencies, or the violations contributed to or were unavoidable consequences of the underlying problem. Normally, Severity Level II and III violations are not aggregated into a higher severity level.

The purpose of aggregating violations is to focus the licensee's attention on the fundamental underlying causes for which enforcement action appears warranted and to reflect the

fact that several violations with a common cause may be more significant collectively than individually and may therefore, warrant a more substantial enforcement action.

### *B. Repetitive Violations*

The severity level of a Severity Level IV violation may be increased to Severity Level III, if the violation can be considered a repetitive violation.<sup>6</sup> The purpose of escalating the severity level of a repetitive violation is to acknowledge the added significance of the situation based on the licensee's failure to implement effective corrective action for the previous violation. The decision to escalate the severity level of a repetitive violation will depend on the circumstances, such as, but not limited to, the number of times the violation has occurred, the similarity of the violations and their root causes, the adequacy of previous corrective actions, the period of time between the violations, and the significance of the violations.

### *C. Willful Violations*

Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the

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<sup>6</sup> The term "repetitive violation" or "similar violation" as used in this policy statement means a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation normally occurring (1) within the past 2 years of the inspection at issue, or (2) the period within the last two inspections, whichever is longer.

Commission or a licensee. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization. Although removal of the person is not necessarily required, substantial disciplinary action is expected.

Therefore, the severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official<sup>7</sup> or non-supervisory employee), the significance of any underlying violation, 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 arriving at the appropriate severity level will be dependent on the circumstances of the violation.

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<sup>7</sup> The term "licensee official" as used in this policy statement 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, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be categorized at least at a Severity Level IV.

#### *D. Violations of Reporting Requirements*

The NRC expects licensees to provide complete, accurate, and timely information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited 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. A licensee will, on the other hand, normally be cited for a failure to report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

### **V. PREDECISIONAL ENFORCEMENT CONFERENCES**

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a vendor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, vendor, or other person before taking enforcement action. The purpose of the

conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective actions taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee may be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective actions. However, if the NRC has sufficient information to conclude that a civil penalty is not warranted, it may proceed to issue an enforcement action without first obtaining the licensee's response to the inspection report.

During the predecisional enforcement conference, the licensee, vendor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, vendors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in the regional offices and are normally open to public observation. Conferences will not normally be open to the public if the enforcement action being contemplated:

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or

(4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

(5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more intervenors or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the above normal criteria for opening or closing conferences, with the approval of the Executive Director for Operations, conferences may either be open or closed to the public after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that the conference will be open to public observation. Consistent with the agency's policy on open meetings, "Staff Meetings Open to Public," published September 20, 1994 (59 FR 48340), the NRC intends to announce open conferences normally at least 10 working days in advance of conferences through (1) notices posted in the Public Document Room, (2) a toll-free telephone recording at 800-952-9674, (3) a toll-free electronic bulletin board at 800-952-9676, and on the World Wide Web at the NRC Office of Enforcement homepage ([www.nrc.gov/OE](http://www.nrc.gov/OE)). In addition, the NRC will also issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences may observe but may not participate in the conference. It is noted that the purpose of conducting open conferences is not to maximize public attendance, but rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures For Providing Security Support For NRC Hearings and Meetings," published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed. The open conference will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report may be made public, subject to withholding certain information (i.e., after appropriate redaction), in which case the associated predecisional enforcement conference will normally be open to public observation. In a conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will

normally be provided an opportunity to participate in the predecisional enforcement conference with the licensee/employer. This participation will normally be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

A predecisional enforcement conference may not need to be held in cases where there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and

may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

## **VI. ENFORCEMENT ACTIONS**

This section describes the enforcement sanctions available to the NRC and specifies the conditions under which each may be used. The basic enforcement sanctions are Notices of Violation, civil penalties, and orders of various types. As discussed further in Section VI.D, related administrative actions such as Notices of Nonconformance, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information are used to supplement the enforcement program. In selecting the enforcement sanctions or administrative actions, the NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters.

Usually, whenever a violation of NRC requirements of more than a minor concern is identified, enforcement action is taken. The nature and extent of the enforcement action is

intended to reflect the seriousness of the violation involved. For the vast majority of violations, a Notice of Violation or a Notice of Nonconformance is the normal action.

However, circumstances regarding the violation findings may warrant discretion being exercised such that the NRC refrains from issuing a Notice of Violation or other enforcement action. (See Section VII.B, "Mitigation of Enforcement Sanctions.")

#### *A. Notice of Violation*

A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The Notice of Violation normally requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date when full compliance will be achieved. The NRC may waive all or portions of a written response to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report. The NRC may require responses to Notices of Violation to be under oath. Normally, responses under oath will be required only in connection with Severity Level I, II, or III violations or orders.

The NRC uses the Notice of Violation as the usual method for formalizing the existence of a violation. Issuance of a Notice of Violation is normally the only enforcement action taken,

except in cases where the criteria for issuance of civil penalties and orders, as set forth in Sections VI.B and VI.C, respectively, are met.

### *B. Civil Penalty*

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee as well as by other licensees conducting similar activities and to emphasize the need for licensees to identify violations and take prompt comprehensive corrective action.

Civil penalties are considered for Severity Level III violations. In addition, civil penalties will normally be assessed for Severity Level I and II violations and knowing and conscious violations of the reporting requirements of section 206 of the Energy Reorganization Act.

Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on violations of significant regulatory concern.

Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty. Allowing mitigation in the latter case could encourage the lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

### *1. Base Civil Penalty*

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, vendors, and other persons. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, materials, and vendor programs. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the

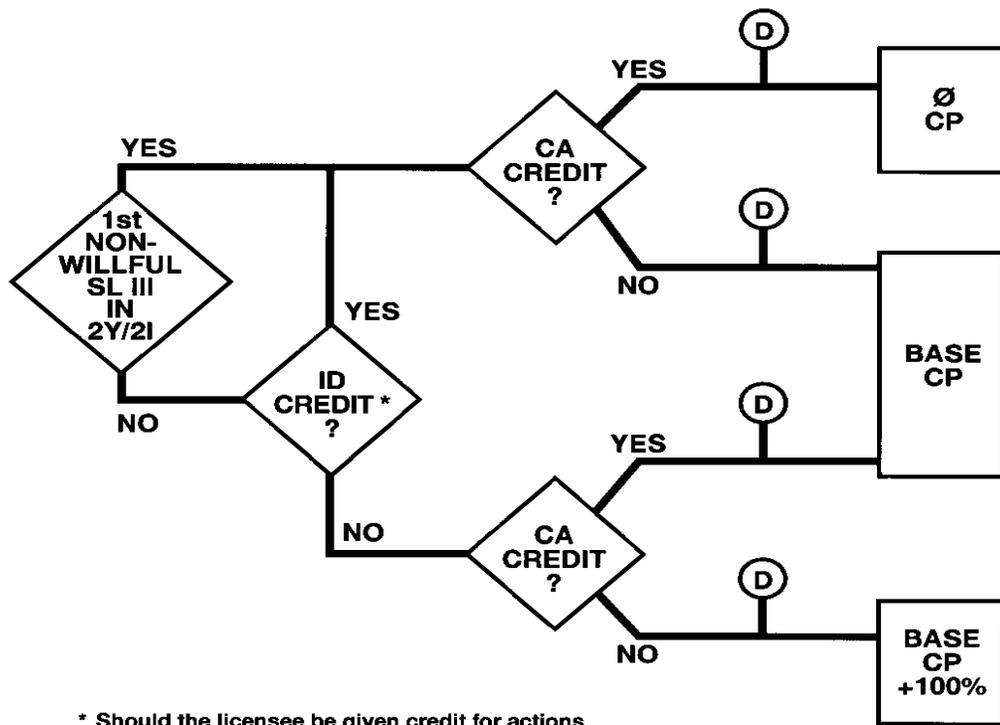
intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider as necessary an increase or decrease on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

## *2. Civil Penalty Assessment*

In an effort to (1) emphasize the importance of adherence to requirements and (2) reinforce prompt self-identification of problems and root causes and prompt and comprehensive correction of violations, the NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties shown in Table 1A and 1B for Severity Level I, II, and III violations as described below.

The civil penalty assessment process considers four decisional points: (a) whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past 2 years or past 2 inspections, whichever is longer; (b) whether the licensee should

be given credit for actions related to identification; (c) whether the licensee's corrective actions are prompt and comprehensive; and (d) whether, in view of all the circumstances, the matter in question requires the exercise of discretion. Although each of these decisional points may have several associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100%. The flow chart presented below is a graphic representation of the civil penalty assessment process.



\* Should the licensee be given credit for actions related to identification?

(D) Discretion, e.g., SL I and II violations should normally result in a civil penalty regardless of ID and CA.

a. *Initial Escalated Action*

When the NRC determines that a non-willful Severity Level 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 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 VI.B.2.c, below). Using 2 years as the basis for assessment is expected to cover most situations, but considering a slightly longer or shorter period might be warranted based on the circumstances of a particular case. The starting point of this period should be considered the date when the licensee was put on notice of the need to take corrective action. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

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

***b. Credit for Actions Related to Identification***

(1) If a Severity Level I or II violation or a willful Severity Level III violation has occurred--or if, during the past 2 years or 2 inspections, whichever is longer, the licensee has been issued at least one other escalated action--the civil penalty assessment should normally consider the factor of identification in addition to corrective action (see the discussion under Section VI.B.2.c, below). As to identification, the NRC should consider whether the licensee should be given credit for actions related to identification.

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* requires considering all the circumstances of identification including:

(i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event<sup>8</sup>;

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<sup>8</sup> An "event," as used here, means (1) an event characterized by an active adverse impact on equipment or personnel, readily obvious 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 to have a system 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 discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

- (ii) Whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of those opportunities;
  
- (iii) Whether the problem was revealed as the result of a licensee self-monitoring effort, such as conducting an audit, a test, a surveillance, a design review, or troubleshooting;
  
- (iv) For a problem revealed through an event, the ease of discovery, and the degree of licensee initiative in identifying the root cause of the problem and any associated violations;
  
- (v) 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;
  
- (vi) For NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier; and
  
- (vii) For cases in which the NRC identifies the overall problem requiring corrective action (e.g., a programmatic issue), the degree of licensee initiative or lack of initiative in identifying the problem or problems requiring corrective action.

(2) Although some cases may consider 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:

(i) **Licensee-Identified.** When a problem requiring corrective action is licensee-identified (i.e., identified before the problem has resulted in an event), the NRC should normally give the licensee credit for actions related to identification, regardless of whether prior opportunities existed to identify the problem.

(ii) **Identified Through an Event.** When a problem requiring corrective action is identified through an event, the decision on whether to give the licensee credit for actions related to identification normally should consider the ease of discovery, whether the event occurred as the result of a licensee self-monitoring effort (i.e., whether the licensee was "looking for the problem"), the degree of licensee initiative in identifying the problem or problems requiring corrective action, and whether prior opportunities existed to identify the problem.

Any of these considerations may be overriding if particularly noteworthy or particularly egregious. For example, if the event occurred as the result of conducting a surveillance or similar self-monitoring effort (i.e., the licensee was looking for the problem), the licensee should normally be given credit for identification. As a second instance, even if the problem was easily discovered (e.g., revealed by a large spill of liquid), the NRC may choose to give credit because noteworthy licensee effort was exerted in ferreting out the root cause and associated violations, or simply because no prior opportunities (e.g., procedural cautions, post-maintenance testing, quality control failures, readily observable parameter trends, or repeated or locked-in annunciator warnings) existed to identify the problem.

(iii) **NRC-Identified.** When a problem requiring corrective action is NRC-identified, the decision on whether to give the licensee credit for actions related to *Identification* should normally be based on an additional question: should the licensee have reasonably 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 might include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identifies the violation but concludes that, under the circumstances, the licensee's actions related to *Identification* were not unreasonable, the matter would be treated as licensee-identified for purposes of assessing the civil penalty. In such cases, the question of *Identification* credit shifts to whether the licensee should be penalized for NRC's identification of the problem.

(iv) **Mixed Identification.** For "mixed" identification situations (i.e., where multiple violations exist, some NRC-identified, some licensee-identified, 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 NRC 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 NRC's path of analysis had been dismissed or was being pursued in parallel by the licensee.

In some cases, the licensee may have addressed the isolated symptoms of each violation (and may have identified the violations), but failed to recognize the common root cause and taken the necessary comprehensive action. Where this is true, the decision on whether to give licensee credit for actions related to *Identification* should focus on identification of *the problem requiring corrective action* (e.g., the programmatic breakdown). As such, depending on the chronology of the various violations, the earliest of the individual violations might be considered missed opportunities for the licensee to have identified the larger problem.

(v) **Missed Opportunities to Identify.** Missed opportunities include prior notifications or missed opportunities to identify or prevent violations such as (1) through normal surveillances, audits, or quality assurance (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. It may include findings of the NRC, the licensee, or industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to take action to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, consideration will be given to, 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 should normally depend on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. Missed opportunities is normally not applied where the licensee appropriately reviewed the opportunity for application to its activities and reasonable action was either taken or planned to be taken within a reasonable time.

In some situations the missed opportunity is a violation in itself. In these cases, unless the missed opportunity is a Severity Level III violation in itself, the missed opportunity violation may be grouped with the other violations into a single Severity Level III "problem." However, if the missed opportunity is the *only* violation, then it should not normally be counted twice (i.e.,

both as the violation and as a missed opportunity--"double counting") unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity should also be considered. While a rigid time-frame is unnecessary, a 2-year period should generally be considered for consistency in implementation, 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, based on whether *Corrective Action* is judged to be reasonably prompt and comprehensive. When the licensee is *not* given credit for actions related to *Identification*, the civil penalty assessment should normally result in a Notice of Violation with either a base civil penalty or a base civil penalty escalated by 100%, depending on the quality of *Corrective Action*, because the licensee's performance is clearly not acceptable.

***c. Credit for Prompt and Comprehensive Corrective Action***

The purpose of the *Corrective Action* factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue,

but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root 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 issuing at least a base civil penalty.

In assessing this factor, consideration will be given to the timeliness of the corrective action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's 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 to the specific violation or broadly to the general area of concern). Even in cases when the NRC, at the time of the enforcement conference, 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 root cause and are considered sufficient to prevent recurrence of the violation and similar violations.

Normally, the judgment of the adequacy of corrective actions will hinge on whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive corrective action. This will normally be judged 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*. For cases in which the licensee does not get credit for actions related to *Identification* because the NRC identified the problem, the assessment of the licensee's corrective action should begin from the time when the NRC put the licensee on notice of the problem. Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive.

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

(i) Makes a prompt decision on operability; and either

(ii) Makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition; or

(iii) Promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B, if it intends to restore the facility or procedure to the FSAR description.

***d. Exercise of Discretion***

As provided in Section VII, "Exercise of Discretion," 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 the NRC's concern regarding the violation at issue and that it conveys the appropriate message to the licensee. However, in no instance will a civil penalty for any one violation exceed \$110,000 per day.

**TABLE 1A--BASE CIVIL PENALTIES**

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a.	Power reactors and gaseous diffusion plants.....	\$110,000
b.	Fuel fabricators, industrial processors, <sup>1</sup> and independent spent fuel and monitored retrievable storage installations.....	\$27,500
c.	Test reactors, mills and uranium conversion facilities, contractors, vendors, waste disposal licensees, industrial radiographers, and other large material users.....	\$11,000
d.	Research reactors, academic, medical, or other small material users <sup>2</sup> .....	\$5,500

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<sup>1</sup> Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

<sup>2</sup> This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

**TABLE 1B--BASE CIVIL PENALTIES**

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Severity Level	Base Civil Penalty Amount
	(Percent of amount listed in Table 1A)
I .....	100%
II .....	80%
III .....	50%

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*C. 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 may also be issued in lieu of, or in addition to, civil penalties, as appropriate for Severity Level I, II, or III violations. Orders may be issued as follows:

1. License Modification orders are issued when some change in licensee equipment, procedures, personnel, or management controls is necessary.
2. Suspension Orders may be used:
  - (a) To remove a threat to the public health and safety, common defense and security, or the environment;
  - (b) To stop facility construction when,
    - (i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component; or

- (ii) The licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;
- (c) When the licensee has not responded adequately to other enforcement action;
- (d) When the licensee interferes with the conduct of an inspection or investigation; or
- (e) For any reason not mentioned above for which license revocation is legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

3. Revocation Orders may be used:
- (a) When a licensee is unable or unwilling to comply with NRC requirements;
  - (b) When a licensee refuses to correct a violation;
  - (c) When licensee does not respond to a Notice of Violation where a response was required;

(d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or

(e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

4. Cease and Desist Orders may be used to stop an unauthorized activity that has continued after notification by the NRC that the activity is unauthorized.

5. Orders to unlicensed persons, including vendors and contractors, and employees of any of them, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

Unless a separate response is warranted pursuant to 10 CFR 2.201, a Notice of Violation need not be issued where an order is based on violations described in the order. The violations described in an order need not be categorized by severity level.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is

responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show why the order should not be issued in the proposed manner by way of a Demand for Information. (See 10 CFR 2.204)

#### *D. Related Administrative Actions*

In addition to the formal enforcement actions, Notices of Violation, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and vendors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. Notices of Nonconformance are written notices describing vendor's failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices of Nonconformances request non-licensees to 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.

3. Confirmatory Action Letters are letters confirming a licensee's or vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

4. Letters of Reprimand are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.

5. Demands for Information are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.

## **VII. EXERCISE OF DISCRETION**

Notwithstanding the normal guidance contained in this policy, as provided in Section III, "Responsibilities," the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action appropriately reflects the level of NRC concern regarding the violation at issue and conveys the appropriate message to the licensee.

### *A. Escalation of Enforcement Sanctions*

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include (1) escalating civil penalties, (2) issuing appropriate orders, and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$110,000 per violation, per day.

1. *Civil penalties.* Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, the NRC may exercise discretion by either proposing a civil penalty where application of the factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty (i.e., base or twice the base civil penalty) to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message to the licensee. The Commission will be notified if the deviation in the amount of the civil penalty proposed under this discretion from the amount of the civil penalty assessed under the normal process is more than two times the base civil penalty shown in Tables 1A and 1B. Examples when this discretion should be considered include, but are not limited to the following:

- (a) Problems categorized at Severity Level I or II;
- (b) Overexposures, or releases of radiological material in excess of NRC requirements;
- (c) Situations involving particularly poor licensee performance, or involving willfulness;
- (d) Situations when the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation;

(e) Situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase;

(f) Situations when the licensee made a conscious decision to be in noncompliance in order to obtain an economic benefit;

(g) Cases involving the loss of a source. In addition, unless the licensee self-identifies and reports the loss to the NRC, these cases should normally result in a civil penalty in an amount at least in the order of the cost of an authorized disposal of the material or of the transfer of the material to an authorized recipient; or

(h) Severity Level II or III violations associated with departures from the Final Safety Analysis Report identified after two years from October 18, 1996. Such a violation or problem would consider the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted).

2. *Orders.* The NRC may, where necessary or desirable, issues orders in conjunction with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3. *Daily civil penalties.* In order to recognize the added technical safety significance or regulatory significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of \$110,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

#### *B. Mitigation of Enforcement Sanctions*

The NRC may exercise discretion and refrain from issuing a civil penalty and/or a Notice of Violation, if the outcome of the normal process described in Sections VI.A and VI.B does not result in a sanction consistent with an appropriate regulatory message. In addition, even if the NRC exercises this discretion, when the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report. The approval of the Director, Office of Enforcement, with consultation with the Deputy Executive Director as warranted, is required for exercising discretion of the type described in Section VII.B.1.b where a willful violation is involved, and of the types described in Sections VII.B.2 through VII.B.6. Commission notification is required for exercising discretion of the type described in: (1) Section VII.B.2 the first time discretion is exercised during that plant shutdown, and (2) Section VII.B.6 where appropriate based on the uniqueness or significance of

the issue. Examples when discretion should be considered for departing from the normal approach in Sections VI.A and VI.B include, but are not limited to the following:

1. *Licensee-Identified Severity Level IV Violations.* The NRC, with the approval of the Regional Administrator or his or her designee, may refrain from issuing a Notice of Violation for a Severity Level IV violation that is documented in an inspection report (or official field notes for some material cases) and described therein as a Non-Cited Violation (NCV) provided that the inspection report includes a brief description of the corrective action and that the violation meets all of the following criteria:

(a) It was identified by the licensee;<sup>9</sup>

(b) It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, or the period within the last two inspections, whichever is longer;

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<sup>9</sup> Discretion is not warranted when a licensee identifies a violation as a result of an event where the root 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. Discretion may be warranted if the licensee demonstrated initiative in identifying the violation's root cause.

(c) It was or will be corrected within a reasonable time, by specific corrective action committed to by the licensee by the end of the inspection, including immediate corrective action and comprehensive corrective action to prevent recurrence;

(d) It was not a willful violation or if it was a willful violation;

(i) The information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional section or branch chief;

(ii) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.C);

(iii) The violation appears to be the isolated 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; and

(iv) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization. Although

removal of the employee from licensed activities is not necessarily required, substantial disciplinary action is expected.

2. *Violations Identified During Extended Shutdowns or Work Stoppages.* The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after (i) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or (ii) 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 official field notes for some material cases) and that it meets all of the following criteria:

(a) It was either licensee-identified as a result of a comprehensive program for problem identification and correction that was developed in response to the shutdown or identified as a result of an employee allegation to the licensee; (If the NRC identifies the violation and all of the other criteria are met, the NRC should determine whether enforcement action is necessary to achieve remedial action, or if discretion may still be appropriate.)

(b) It is based upon activities of the licensee prior to the events leading to the shutdown;

(c) It would not be categorized at Severity Level I;

- (d) It was not willful; and
- (e) The licensee's decision to restart the plant requires NRC concurrence.

3. *Violations Involving Old Design Issues.* The NRC may refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

- (a) It was a licensee-identified as a result of its voluntary initiative;
- (b) It was or will be corrected, including 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 caused by similar root causes); and
- (c) It was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

In addition, the NRC may refrain from issuing a Notice of Violation for a Severity Level II, III, or IV violation that meets the above criteria provided the violation was caused by conduct

that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

(a) The NRC identifies the violation unless it was likely in the staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative (provided the schedule provides for completion of the licensee's initiative within two years after October 18, 1996;

(b) The licensee identifies the violation as a result of an event or surveillance or other required testing where required corrective action identifies the FSAR issue;

(c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;

(d) There is willfulness associated with the violation;

(e) The licensee fails to make a report required by the identification of the departure from the FSAR; or

(f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

4. *Violations Identified Due to Previous Enforcement Action.* The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after the NRC has taken enforcement action, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was licensee-identified as part of the corrective action for the previous enforcement action;

(b) It has the same or similar root cause as the violation for which enforcement action was issued;

(c) It does not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation; and

(d) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

(e) It would not be categorized at Severity Level I;

5. *Violations Involving Certain Discrimination Issues.* Enforcement discretion may be exercised for discrimination cases when a licensee who, 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 the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, 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 satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter

promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (e.g., by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

6. *Violations Involving Special Circumstances.* Notwithstanding the outcome of the normal enforcement process addressed in Section VI.A or the normal civil penalty assessment process addressed in Section VI.B, the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level 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 technical and regulatory significance of the violation, the clarity of the requirement, the appropriateness of the requirement, the overall sustained performance of the licensee has been particularly good, and other relevant circumstances, including any that may have changed since the violation. 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 by reasonable licensee quality assurance measures or management controls. 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.

*C. Exercise of Discretion for an Operating Facility*

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. A licensee seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether or not to issue a NOED.

The appropriate Regional Administrator, or his or her designee, may issue a NOED where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation, or his or her designee, may issue a NOED if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). The person exercising enforcement discretion will document the decision.

For an operating plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant

transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The decision to exercise enforcement discretion 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 staff has chosen to issue a NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego enforcement is discretionary. When enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

## VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. An enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence) failed to take required actions which have actual or potential safety significance. Most transgressions of individuals at the level of Severity Level III or IV violations will be handled by citing only the facility licensee.

More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.

- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.

- Compliance with an express direction of management, such as the Shift Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.

- Individual error directly resulting from following the technical advice of an expert unless the advice was clearly unreasonable and the licensed individual should have recognized it as such.

- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual. However, violations involving willful conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.
  
- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
  
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
  
- Willfully defeating alarms which have safety significance.
  
- Unauthorized abandoning of reactor controls.
  
- Dereliction of duty.
  
- Falsifying records required by NRC regulations or by the facility license.
  
- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.

- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.
  
- Submitting false information and as a result gaining unescorted access to a nuclear power plant.
  
- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR part 50, appendix B, or other regulatory requirement.
  
- Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.
  
- Willfully supplying, by vendors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.
  
- Willfully performing unauthorized bypassing of required reactor or other facility safety systems.
  
- Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other license conditions (enforcement action for a willful violation will not be

taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10 CFR 50.54 (x), (i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)

Normally, some enforcement action is taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors' employees. In deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee, the NRC recognizes that judgments will have to be made on a case by case basis. In making these decisions, the NRC will consider factors such as the following:

1. The level of the individual within the organization.
2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing.
3. The safety consequences of the misconduct.
4. The benefit to the wrongdoer, e.g., personal or corporate gain.

5. The degree of supervision of the individual, i.e., how closely is the individual monitored or audited, and the likelihood of detection (such as a radiographer working independently in the field as contrasted with a team activity at a power plant).
6. The employer's response, e.g., disciplinary action taken.
7. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.
8. The degree of management responsibility or culpability.
9. Who identified the misconduct.

Any proposed enforcement action involving individuals must be issued with the concurrence of the Deputy Executive Director. The particular sanction to be used should be determined on a case-by-case basis.<sup>10</sup> Notices of Violation and Orders are examples of enforcement actions that may be appropriate against individuals. The administrative action of a Letter of Reprimand may also be considered. In addition, the NRC may issue Demands for

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<sup>10</sup> Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

Information to gather information to enable it to determine whether an order or other enforcement action should be issued.

Orders to NRC-licensed reactor operators may involve suspension for a specified period, modification, or revocation of their individual licenses. Orders to unlicensed individuals might include provisions that would:

- Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing specified training or meeting certain qualifications.
- Require notification to the NRC before resuming work in licensed activities.
- Require the person to tell a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a Notice of Violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a Notice of Violation will be issued for the first

confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties or evidence of prolonged use. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to 3 years the second time a licensed operator exceeds those cutoff levels. In the event there are less than 3 years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the Part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is also subject to license suspension, revocation, or denial.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in 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, appropriate enforcement actions may be taken regarding matters that raise issues of integrity, competence, fitness-for-duty, or other matters that may not necessarily be a violation of specific Commission requirements.

In the case of an unlicensed person, whether a firm or an individual, an order modifying the facility license may be issued to require (1) the removal of the person from all licensed activities for a specified period of time or indefinitely, (2) prior notice to the NRC before

utilizing the person in licensed activities, or (3) the licensee to provide notice of the issuance of such an order to other persons involved in licensed activities making reference inquiries. In addition, orders to employers might require retraining, additional oversight, or independent verification of activities performed by the person, if the person is to be involved in licensed activities.

## **IX. INACCURATE AND INCOMPLETE INFORMATION**

A violation of the regulations involving submittal of incomplete and/or inaccurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement 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 normally will be categorized based on the guidance herein, in Section IV, "Severity of Violations," and in Supplement VII.

The Commission recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, the Commission must be able to rely on oral communications from licensee officials concerning significant information. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to factors such as (1) the degree of knowledge that the communicator should have had, regarding the matter, in

view of his or her position, training, and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or 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 information which was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent 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 official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a Notice of Violation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or before the

NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available or the advancement in technology was made, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding 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 later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or

providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described in this section.

## **X. ENFORCEMENT ACTION AGAINST NON-LICENSEES**

The Commission's enforcement policy is also applicable to non-licensees, including employees of licensees, to contractors and subcontractors, and to employees of contractors and subcontractors, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Vendors of products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with reactor licensees, vendors may be required to have quality assurance programs that meet applicable requirements including 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Vendors supplying products or services to reactor, materials, and 10 CFR Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments (e.g., 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their vendors have programs that meet applicable requirements. Notices of Violation will be issued for vendors that violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a vendor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for vendors which fail to meet commitments related to NRC activities.

## **XI. REFERRALS TO THE DEPARTMENT OF JUSTICE**

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice (DOJ) for investigation. Referral to the DOJ does not preclude the NRC from taking other enforcement action under this policy. However, enforcement actions will be coordinated with the DOJ in accordance with the Memorandum of Understanding between the NRC and the DOJ, 53 FR 50317 (December 14, 1988).

## **XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS**

Enforcement actions and licensees' responses, in accordance with 10 CFR 2.790, are publicly available for inspection. In addition, press releases are generally issued for orders and civil penalties and are issued at the same time the order or proposed imposition of the civil penalty is issued. In addition, press releases are usually issued when a proposed civil penalty is withdrawn or substantially mitigated by some amount. Press releases are not normally issued for Notices of Violation that are not accompanied by orders or proposed civil penalties.

### **XIII. REOPENING CLOSED ENFORCEMENT ACTIONS**

If significant new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director.

### **APPENDIX A: SAFETY AND COMPLIANCE**

As commonly understood, safety means freedom from exposure to danger, or protection from harm. In a practical sense, an activity is deemed to be safe if the perceived risks are judged to be acceptable. The Atomic Energy Act of 1954, as amended, establishes "adequate protection" as the standard of safety on which NRC regulation is based. In the context of NRC regulation, safety means avoiding undue risk or, stated another way, providing reasonable assurance of

adequate protection for the public in connection with the use of source, byproduct and special nuclear materials.

The definition of compliance is much simpler. Compliance simply means meeting applicable regulatory requirements. The relationship between compliance and safety is discussed below.

- Safety is the fundamental regulatory objective, and compliance with NRC requirements plays a fundamental role in giving the NRC confidence that safety is being maintained. NRC requirements, including technical specifications, other license conditions, orders, and regulations, have been designed to ensure adequate protection--which corresponds to "no undue risk to public health and safety"--through acceptable design, construction, operation, maintenance, modification, and quality assurance measures. In the context of risk-informed regulation, compliance plays a very important role in ensuring that key assumptions used in underlying risk and engineering analyses remain valid.
- Adequate protection is presumptively assured by compliance with NRC requirements. Circumstances may arise, however, where new information reveals, for example, that an unforeseen hazard exists or that there is a substantially greater potential for a known hazard to occur. In such situations, the NRC has the statutory authority to require licensee action above and beyond existing regulations to maintain the level of protection necessary to avoid undue risk to public health and safety.

- The NRC 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 non-compliances occur, the NRC must evaluate the degree of risk posed by that non-compliance to determine if specific immediate action is required. Where needed to ensure adequate protection of public health and safety, the NRC may demand immediate licensee action, up to and including a shutdown or cessation of licensed activities. In addition, in determining the appropriate action to be taken, the NRC must evaluate the non-compliance both in terms of its direct safety and regulatory significance and by assessing whether it is part of a pattern of non-compliance (i.e., the degree of pervasiveness) that can lead to the determination that licensee control processes are no longer adequate to ensure protection of the public health and safety. Based on the NRC's evaluation, the appropriate action could include refraining from taking any action, taking specific enforcement action, issuing orders, or providing input to other regulatory actions or assessments, such as increased oversight (e.g., increased inspection).
- Since some requirements are more important to safety than others, the Commission should use a risk-informed approach wherever when applying NRC resources to the oversight of licensed activities (this includes enforcement).

## APPENDIX B: SUPPLEMENTS - ENFORCEMENT EXAMPLES

This appendix provides examples of violations in each of four severity levels as guidance in determining the appropriate severity level for violations in each of eight activity areas (reactor operations, Part 50 facility construction, safeguards, health physics, transportation, fuel cycle and materials operations, miscellaneous matters, and emergency preparedness).

### SUPPLEMENT I--REACTOR OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

A. *Severity Level I* - Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications being exceeded;
2. A system<sup>11</sup> designed to prevent or mitigate a serious safety event not being able to perform its intended safety function<sup>12</sup> when actually called upon to work;

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<sup>11</sup> The term "system" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

<sup>12</sup> "Intended 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.

3. An accidental criticality; or

4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. *Severity Level II* - Violations involving for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function;

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

3. A licensed operator at the control of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol; or

4. Failures to meet 10 CFR 50.59 including several unreviewed safety questions, or conflicts with technical specifications, involving a broad spectrum of problems affecting multiple areas, some of which impact the operability of required equipment.

C. *Severity Level III* - Violations involving for example:

1. A significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, in the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement; or

(b) In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement.

2. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability (e.g., component parameters outside approved limits such as pump flow rates, heat exchanger transfer characteristics, safety valve lift setpoints, or valve stroke times);

3. Inattentiveness to duty on the part of licensed personnel;

4. Changes in reactor parameters that cause unanticipated reductions in margins of safety;

5. [Reserved]

6. A licensee failure to conduct adequate oversight of vendors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;

8. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation;

9. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;
  
10. The failure to meet 10 CFR 50.59 where an unreviewed safety question is involved, or a conflict with a technical specification, such that a license amendment is required;
  
11. The failure to perform the required evaluation under 10 CFR 50.59 prior to implementation of the change in those situations in which no unreviewed safety question existed, but an extensive evaluation would be needed before a licensee would have had a reasonable expectation that an unreviewed safety question did not exist;
  
12. Programmatic failures (i.e., multiple or recurring failures) to meet the requirements of 10 CFR 50.59 and/or 50.71(e) that show a significant lack of attention to detail, whether or not such failures involve an unreviewed safety question, resulting in a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met. Application of this example requires weighing factors such as:  
a) the time period over which the violations occurred and existed, b) the number of failures, c) whether one or more systems, functions, or pieces of equipment were involved and the importance of such equipment, functions, or systems, and d) the potential significance of the failures;

13. The failure to update the FSAR as required by 10 CFR 50.71(e) where the unupdated FSAR was used in performing a 10 CFR 50.59 evaluation and as a result, an inadequate decision was made demonstrating a significant regulatory concern; or

14. The failure to make a report required by 10 CFR 50.72 or 50.73 associated with (a) an unreviewed safety question, (b) a conflict with a technical specification, or (c) any other Severity Level III violation.

D. *Severity Level IV* - Violations involving for example:

1. A less significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

(b) In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable;

2. [Reserved]

3. A failure to meet regulatory requirements that have more than minor safety or environmental significance;
4. A failure to make a required Licensee Event Report;
5. Relatively isolated violations of 10 CFR 50.59 not involving severity level II or III violations that do not suggest a programmatic failure to meet 10 CFR 50.59. Relatively isolated violations or failures would include a number of recently discovered violations that occurred over a period of years and are not indicative of a programmatic safety concern with meeting 10 CFR 50.59 or 50.71(e);
6. A relatively isolated failure to document an evaluation where there is evidence that an adequate evaluation was performed prior to the change in the facility or procedures, or the conduct of an experiment or test;
7. A failure to update the FSAR as required by 10 CFR 50.71(e) where an adequate evaluation under 10 CFR 50.59 had been performed and documented; or
8. A past programmatic failure to meet 10 CFR 50.59 and/or 10 CFR 50.71(e) requirements not involving Severity Level II or III violations that does not reflect a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met.

#### E. Minor Violations

A failure to meet 10 CFR 50.59 requirements that involves a change to the FSAR description or procedure, or involves a test or experiment not described in the FSAR, where there was not a reasonable likelihood that the change to the facility or procedure or the conduct of the test or experiment would ever be an unreviewed safety question. In the case of a 10 CFR 50.71(e) violation, where a failure to update the FSAR would not have a material impact on safety or licensed activities. The focus of the minor violation is not on the actual change, test, or experiment, but on the potential safety role of the system, equipment, etc that is being changed, tested, or experimented on.

### **SUPPLEMENT II--PART 50 FACILITY CONSTRUCTION**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of Part 50 facility construction.

A. *Severity Level I* - Violations involving structures or systems that are completed<sup>13</sup> in such a manner that they would not have satisfied their intended safety related purpose.

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<sup>13</sup> The term "completed" as used in this supplement means completion of construction including review and acceptance by the construction QA organization.

B. *Severity Level II* - Violations involving for example:

1. A breakdown in the Quality Assurance (QA) program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). These deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. *Severity Level III* - Violations involving for example:

1. A deficiency in a licensee QA program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). This significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. A failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. A failure to make a required 10 CFR 50.55(e) report.

D. *Severity Level IV* - Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

### **SUPPLEMENT III--SAFEGUARDS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of safeguards.

- A. *Severity Level I* - Violations involving for example:

1. An act of radiological sabotage in which the security system did not function as required and, as a result of the failure, there was a significant event, such as:

- (a) A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, was exceeded;

- (b) A system designed to prevent or mitigate a serious safety event was not able to perform its intended safety function when actually called upon to work; or

(c) An accidental criticality occurred;

2. The theft, loss, or diversion of a formula quantity<sup>14</sup> of special nuclear material (SNM); or

3. Actual unauthorized production of a formula quantity of SNM

B. *Severity Level II* - Violations involving for example:

1. The entry of an unauthorized individual<sup>15</sup> who represents a threat into a vital area<sup>16</sup> from outside the protected area;

2. The theft, loss or diversion of SNM of moderate strategic significance<sup>17</sup> in which the security system did not function as required; or

3. Actual unauthorized production of SNM.

C. *Severity Level III* - Violations involving for example:

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<sup>14</sup> See 10 CFR 73.2 for the definition of "formula quantity."

<sup>15</sup> The term "unauthorized individual" as used in this supplement means someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

<sup>16</sup> The phrase "vital area" as used in this supplement includes vital areas and material access areas.

<sup>17</sup> See 10 CFR 73.2 for the definition of "special nuclear material of moderate strategic significance."

1. A failure or inability to control access through established systems or procedures, such that an unauthorized individual (i.e., not authorized unescorted access to protected area) could easily gain undetected access<sup>18</sup> into a vital area from outside the protected area;
  
2. A failure to conduct any search at the access control point or conducting an inadequate search that resulted in the introduction to the protected area of firearms, explosives, or incendiary devices and reasonable facsimiles thereof that could significantly assist radiological sabotage or theft of strategic SNM;
  
3. A failure, degradation, or other deficiency of the protected area intrusion detection or alarm assessment systems such that an unauthorized individual who represents a threat could predictably circumvent the system or defeat a specific zone with a high degree of confidence without insider knowledge, or other significant degradation of overall system capability;
  
4. A significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of strategic SNM;
  
5. A failure to protect or control classified or safeguards information considered to be significant while the information is outside the protected area and accessible to those not authorized access to the protected area;

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<sup>18</sup> In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

6. A significant failure to respond to an event either in sufficient time to provide protection to vital equipment or strategic SNM, or with an adequate response force;

7. A failure to perform an appropriate evaluation or background investigation so that information relevant to the access determination was not obtained or considered and as a result a person, who would likely not have been granted access by the licensee, if the required investigation or evaluation had been performed, was granted access; or

8. A breakdown in the security program involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. *Severity Level IV* - Violations involving for example:

1. A failure or inability to control access such that an unauthorized individual (i.e., authorized to protected area but not to vital area) could easily gain undetected access into a vital area from inside the protected area or into a controlled access area;

2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;

3. A failure to implement 10 CFR Parts 25 and 95 with respect to the information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;
4. A failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71 (c) and (d), where the omitted information (i) is not otherwise available in easily retrievable records, and (ii) significantly contributes to the ability of either the NRC or the licensee to identify a programmatic breakdown;
5. A failure to conduct a proper search at the access control point;
6. A failure to properly secure or protect classified or safeguards information inside the protected area which could assist an individual in an act of radiological sabotage or theft of strategic SNM where the information was not removed from the protected area;
7. A failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area but which was neither easily or likely to be exploitable;
8. A failure to conduct an adequate search at the exit from a material access area;

9. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation; or

10. Other violations that have more than minor safeguards significance.

#### **SUPPLEMENT IV--HEALTH PHYSICS (10 CFR PART 20)**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of health physics, 10 CFR Part 20.<sup>19</sup>

A. *Severity Level I* - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 25 rems total effective dose equivalent, 75 rems to the lens of the eye, or 250 rads to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 2.5 rems total effective dose equivalent;

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<sup>19</sup> Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

3. A radiation exposure during any year of a minor in excess of 2.5 rems total effective dose equivalent, 7.5 rems to the lens of the eye, or 25 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 1.0 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i);  
or

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

B. *Severity Level II* - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 10 rems total effective dose equivalent, 30 rems to the lens of the eye, or 100 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 1 rem total effective dose equivalent; 3.0 rems to the lens of the eye, or 10 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 0.5 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

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

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

C. *Severity Level III* - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 5 rems total effective dose equivalent, 15 rems to the lens of the eye, or 50 rems to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;
2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 0.5 rem total effective dose equivalent (except when doses are in accordance with the provisions of Section 20.1208(d));
3. A radiation exposure during any year of a minor in excess of 0.5 rem total effective dose equivalent; 1.5 rems to the lens of the eye, or 5 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;
4. A worker exposure above regulatory limits when such exposure reflects a programmatic (rather than an isolated) weakness in the radiation control program;
5. An annual exposure of a member of the public in excess of 0.1 rem total effective dose equivalent (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));
6. A release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits referenced in 10 CFR 20.1302(b)(2)(i)

(except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

7. 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);

8. A substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20 Sections 20.1001-20.2401 whether or not an exposure or release occurs;

9. Disposal of licensed material not covered in Severity Levels I or II;

10. A release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public to levels or doses exceeding the annual dose limits for members of the public, or that reflects a programmatic (rather than an isolated) weakness in the radiation control program;

11. Conduct of licensee activities by a technically unqualified person;

12. A significant failure to control licensed material; or

13. A breakdown in the radiation safety program involving a number of violations that are related (or, if isolated, that are recurring) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. *Severity Level IV* - Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.1201, 20.1207, or 20.1208 not constituting Severity Level I, II, or III violations;

2. A release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem in any 1 hour (2 millirem/hour) or 50 millirems in a year;

4. Failure to maintain and implement radiation programs to keep radiation exposures as low as is reasonably achievable;

5. Doses to a member of the public in excess of any EPA generally applicable environmental radiation standards, such as 40 CFR Part 190;

6. A failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 20.2203(a);
7. A failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206;
8. A failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d); or
9. Any other matter that has more than a minor safety, health, or environmental significance.

#### **SUPPLEMENT V - TRANSPORTATION**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of NRC transportation requirements<sup>20</sup>.

- A. *Severity Level I* - Violations involving for example:

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<sup>20</sup> Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper and a carrier. When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that the material caused a radiation exposure to a member of the public and there was clear potential for the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 50 times the NRC limit; or

3. External radiation levels in excess of 10 times the NRC limit.

B. *Severity Level II* - Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;

3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or

4. A failure to make required initial notifications associated with Severity Level I or II violations.

C. *Severity Level III* - Violations involving for example:

1. Surface contamination in excess of five but not more than 10 times the NRC limit;
2. External radiation in excess of one but not more than five times the NRC limit;
3. Any noncompliance with labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in 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; or
  - (c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material;
4. A failure to make required initial notification associated with Severity Level III violations; or
5. A breakdown in the licensee's program for the transportation of licensed material involving a number of violations that are related (or, if isolated, that are recurring violations) that

collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. *Severity Level IV* - Violations involving for example:

1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limits;
2. Surface contamination in excess of but not more than five times the NRC limit;
3. A failure to register as an authorized user of an NRC-Certified Transport package;
4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;
5. A failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;
6. A failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or
7. Other violations that have more than minor safety or environmental significance.

## SUPPLEMENT VI--FUEL CYCLE AND MATERIALS OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle and materials operations.

A. *Severity Level I* - Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;
2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function;
3. A nuclear criticality accident;
4. A failure to follow the procedures of the quality management program, required by 10 CFR 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient;
5. A safety limit, as defined in 10 CFR 76.4, the Technical Safety Requirements, or the application being exceeded; or

6. Significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not.

B. *Severity Level II* - Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event being inoperable;

3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration;

4. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

5. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (e.g., movement of liquid UF<sub>6</sub> cylinder by unapproved methods).

C. *Severity Level III* - Violations involving for example:

1. A failure to control access to licensed materials for radiation protection purposes as specified by NRC requirements;
2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;
3. Use of radioactive material on humans where such use is not authorized;
4. Conduct of licensed activities by a technically unqualified or uncertified person;
5. A substantial potential for exposures, radiation levels, contamination levels, or releases, including releases of toxic material caused by a failure to comply with NRC regulations, from licensed or certified activities in excess of regulatory limits;
6. Substantial failure to implement the quality management program as required by 10 CFR 35.32 that does not result in a misadministration; failure to report a misadministration; or programmatic weakness in the implementation of the quality management program that results in a misadministration;

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;

8. A failure, during radiographic operations, to have present at least two qualified individuals or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34;

9. A failure to submit an NRC Form 241 as required by 10 CFR 150.20;

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet the safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance;

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification;

12. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In an autoclave, where a containment isolation valve is inoperable for a period in excess of that allowed by the action statement; or

(b) Cranes or other lifting devices engaged in the movement of cylinders having inoperable safety components, such as redundant braking systems, or other safety devices for a period in excess of that allowed by the action statement;

13. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless utilities available, materials or components not according to specifications); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;

14. Changes in parameters that cause unanticipated reductions in margins of safety;

15. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought;

16. A failure of the certificate holder to conduct adequate oversight of vendors or contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

17. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

18. A failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

19. A failure, during radiographic operations, to stop work after a pocket dosimeter is found to have gone off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination is made of the individual's actual radiation exposure.

D. *Severity Level IV* - Violations involving for example:

1. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;
2. Other violations that have more than minor safety or environmental significance;
3. Failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;
4. A failure to keep the records required by 10 CFR 35.32 or 35.33;
5. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;
6. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

7. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2);

or

8. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but could have been sufficient to result in a nuclear criticality.

## SUPPLEMENT VII--MISCELLANEOUS MATTERS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

A. *Severity Level I* - Violations involving for example:

1. Inaccurate or incomplete information<sup>21</sup> that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

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<sup>21</sup> In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference should also be made to the guidance in Section IX, "Inaccurate and Incomplete Information," and to the definition of "licensee official" contained in Section IV.C.

3. Information that the licensee has identified as having significant implications for public health and safety or the common defense and security (“significant information identified by a licensee”) and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

6. A failure to substantially implement the required fitness-for-duty program.<sup>22</sup>

B. *Severity Level II* - Violations involving for example:

1. Inaccurate or incomplete information that is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

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<sup>22</sup> The example for violations for fitness-for-duty relate to violations of 10 CFR Part 26.

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

4. An action by plant management or mid-level management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A failure to provide the notice required by 10 CFR Part 21;

6. A failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

7. A failure to take reasonable action when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use;

8. A deliberate failure of the licensee's Employee Assistance Program (EAP) to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities; or

9. The failure of licensee management to take effective action in correcting a hostile work environment.

C. *Severity Level III* - Violations involving for example:

1. Incomplete or inaccurate information that is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. A failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;
4. An action by first-line supervision or other low-level management in violation of 10 CFR 50.7 or similar regulations against an employee;
5. An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR Part 21 report would have been made;
6. A failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;
7. A failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;
8. A failure to assure, as required, that contractors or vendors have an effective fitness-for-duty program;

9. A breakdown in the fitness-for-duty program involving a number of violations of the basic elements of the fitness-for-duty program that collectively reflect a significant lack of attention or carelessness towards meeting the objectives of 10 CFR 26.10; or

10. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as 10 CFR 50.7(f).

D. *Severity Level IV* - Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance that is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information that the NRC requires be kept by a licensee and that is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation;

3. An inadequate review or failure to review under 10 CFR Part 21 or other procedural violations associated with 10 CFR Part 21 with more than minor safety significance;

4. Violations of the requirements of Part 26 of more than minor significance;

5. A failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73; or

6. Discrimination cases which, in themselves, do not warrant a Severity Level III categorization.

### **SUPPLEMENT VIII--EMERGENCY PREPAREDNESS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of emergency preparedness. It should be noted that citations are not normally made for violations involving emergency preparedness occurring during emergency exercises. However, where exercises reveal (i) training, procedural, or repetitive failures for which corrective actions have not been taken, (ii) an overall concern regarding the licensee's ability to implement its plan in a manner that adequately protects public health and safety, or (iii) poor self critiques of the licensee's exercises, enforcement action may be appropriate.

A. *Severity Level I* - Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the

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

B. *Severity Level II* - Violations involving for example:

1. In a site emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. *Severity Level III* - Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff);

2. A licensee failure to meet or implement one emergency planning standard involving assessment or notification; or

3. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. *Severity Level IV* - Violations involving for example:

A licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

Dated at Rockville, MD, this      day of      , 1997.

For the Nuclear Regulatory Commission.

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John C. Hoyle,  
Secretary of the Commission.

# GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

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## PREFACE

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission (NRC or Commission) and the NRC staff (staff) in initiating enforcement actions, and of the presiding officers and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment.<sup>1</sup> This statement of general policy and procedure will be published as NUREG-1600 to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as appropriate under the circumstances of a particular case.

### I. INTRODUCTION AND PURPOSE

The purpose of the NRC enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. Consistent with that purpose, enforcement action should be used:

- As a deterrent to emphasize the importance of compliance with requirements, and
- To encourage prompt identification and prompt, comprehensive correction of violations.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees, vendors<sup>2</sup>, contractors, and their employees, who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects.<sup>3</sup> Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of ~~these policies and procedures~~ **this enforcement policy**. In no case, however, will licensees who cannot achieve and maintain adequate levels of ~~protection~~ **safety** be permitted to conduct licensed activities.

**For purposes of this policy statement, safety means avoiding undue risk, i.e., providing reasonable assurance of adequate protection for the public in connection with the use of source, byproduct and special nuclear materials. Compliance means meeting regulatory requirements. Appendix A to this policy statement describes the nexus between safety and compliance.**

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<sup>1</sup> Antitrust enforcement matters will be dealt with on a case-by-case basis.

<sup>2</sup> The term "vendor" as used in this policy means a supplier of products or services to be used in an NRC-licensed facility or activity.

<sup>3</sup> This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. Therefore, the term "licensee" is used throughout the policy. However, in those cases where the NRC determines that it is appropriate to take enforcement action against a non-licensee or individual, the guidance in this policy will be used, as applicable. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

## II. STATUTORY AUTHORITY AND PROCEDURAL FRAMEWORK

### *A. Statutory Authority*

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes the NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes the NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes the NRC to impose civil penalties not to exceed \$100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes the NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes the NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Notwithstanding the \$100,000 limit stated in the Atomic Energy Act, the Commission may impose higher civil penalties as provided by the Debt Collection Improvement Act of 1996. Under the Act, the Commission is required to modify civil monetary penalties to reflect inflation. The adjusted maximum civil penalty amount is reflected in 10 CFR 2.205 and this Policy Statement.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

### *B. Procedural Framework*

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The licensee or other person is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the response, the civil penalty may be mitigated, remitted, or imposed. An opportunity is provided for a hearing if a civil penalty is imposed. If a civil penalty is not paid following a hearing or if a hearing is not requested, the matter may be referred to the U.S. Department of Justice to institute a civil action in District Court.

The procedure for issuing an order to institute a proceeding 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 is set forth in 10 CFR 2.202. The licensee or any other person adversely affected by the order may request a hearing. The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful. Section 2.204 sets out the procedures for issuing a Demand for Information (Demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The Demand does not provide hearing rights, as only information is being sought. A licensee must answer a Demand. An unlicensed person may answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

### III. RESPONSIBILITIES

The Executive Director for Operations (EDO) and the principal enforcement officer of the NRC, the Deputy Executive Director for Regulatory Effectiveness, hereafter referred to as the Deputy Executive Director, has been delegated the authority to approve or issue all escalated enforcement actions.<sup>4</sup> The Deputy Executive Director is responsible to the EDO for the NRC enforcement program. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement program. The Director, OE, acts for the Deputy Executive Director in enforcement matters in his absence or as delegated.

Subject to the oversight and direction of OE, and with the approval of the Deputy Executive Director, where necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities. Enforcement orders are normally issued by the Deputy Executive Director or the Director, OE. However, orders may also be issued by the EDO, especially those involving the more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The ~~Director, Office of the Controller,~~ **Chief Financial Officer** has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees.

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<sup>4</sup> The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, 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 technical and regulatory significance of the violations and the surrounding circumstances.

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, "Exercise of Enforcement Discretion." The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will also be provided notice the first time that discretion is exercised for a plant meeting the criteria of Section VII.B.2. **The Commission is also to be provided notification (where appropriate, based on the uniqueness or significance of the issue) for a plant meeting the criteria of Section VII.B.6.** In addition, the Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

- (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 with 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 Severity Level I value shown in Table 1A for that class of licensee;
- (3) Any proposed enforcement action that involves a Severity Level I violation;
- (4) Any action the EDO believes warrants Commission involvement;
- (5) Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and
- (6) Any proposed enforcement action on which the Commission asks to be consulted.

#### **IV. SEVERITY OF VIOLATIONS**

Regulatory requirements<sup>5</sup> have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement process. In considering the significance of a violation, the staff considers the technical significance, i.e., actual and potential consequences, and the regulatory significance. In evaluating the technical significance, risk is an appropriate consideration.

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<sup>5</sup> The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

Consequently, for purposes of formal enforcement action, violations are normally categorized in terms of four levels of severity to show their relative importance within each of the following eight activity areas:

- I. Reactor Operations;
- II. Facility Construction;
- III. Safeguards;
- IV. Health Physics;
- V. Transportation;
- VI. Fuel Cycle and Materials Operations;
- VII. Miscellaneous Matters; and
- VIII. Emergency Preparedness.

Licensed activities will be placed in the activity area most suitable in light of the particular violation involved including activities not directly covered by one of the above listed areas, e.g., export license activities. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level IV violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant regulatory concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern.

The Commission recognizes that there are other violations of minor safety or environmental concern which are below the level of significance of Severity Level IV violations. These minor violations are not the subject of formal enforcement action and are not usually described in inspection reports. To the extent such violations are described, they ~~are noted as Non-Cited Violations~~ will be noted as violations of minor significance that are not subject to formal enforcement action.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

Supplements I through VIII provide examples and serve as guidance in determining the appropriate severity level for violations in each of the eight activity areas. However, the examples are neither exhaustive nor controlling. In addition, these examples do not create new requirements. Each is designed to illustrate the significance that the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

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 best suited to the significance of the particular violation. In some cases, special circumstances may warrant an adjustment to the severity level categorization.

#### *A. Aggregation of Violations*

A group of Severity Level IV violations may be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations have the same underlying cause or programmatic deficiencies, or the violations contributed to or were unavoidable consequences of the underlying problem. Normally, Severity Level II and III violations are not aggregated into a higher severity level.

The purpose of aggregating violations is to focus the licensee's attention on the fundamental underlying causes for which enforcement action appears warranted and to reflect the fact that several violations with a common cause may be more significant collectively than individually and may therefore, warrant a more substantial enforcement action.

### *B. Repetitive Violations*

The severity level of a Severity Level IV violation may be increased to Severity Level III, if the violation can be considered a repetitive violation.<sup>6</sup> The purpose of escalating the severity level of a repetitive violation is to acknowledge the added significance of the situation based on the licensee's failure to implement effective corrective action for the previous violation. The decision to escalate the severity level of a repetitive violation will depend on the circumstances, such as, but not limited to, the number of times the violation has occurred, the similarity of the violations and their root causes, the adequacy of previous corrective actions, the period of time between the violations, and the significance of the violations.

### *C. Willful Violations*

Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization. Although removal of the person is not necessarily required, substantial disciplinary action is expected.

Therefore, the severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee

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<sup>6</sup> The term "repetitive violation" or "similar violation" as used in this policy statement means a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation normally occurring (1) within the past 2 years of the inspection at issue, or (2) the period within the last two inspections, whichever is longer.

official<sup>7</sup> or non-supervisory employee), the significance of any underlying violation, 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 arriving at the appropriate severity level will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be categorized at least at a Severity Level IV.

#### *D. Violations of Reporting Requirements*

The NRC expects licensees to provide complete, accurate, and timely information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited 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. A licensee will, on the other hand, normally be cited for a failure to report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

### **V. PREDECISIONAL ENFORCEMENT CONFERENCES**

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a vendor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, vendor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective actions taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held ~~unless the licensee requests it~~. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee ~~will normally~~ **may** be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective actions. **However, if the NRC has sufficient information to conclude that a civil penalty is not warranted,**

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<sup>7</sup> The term "licensee official" as used in this policy statement 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, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

it may proceed to issue an enforcement action without first obtaining the licensee's response to the inspection report.

During the predecisional enforcement conference, the licensee, vendor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, vendors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in the regional offices and are normally open to public observation. Conferences will not normally be open to the public if the enforcement action being contemplated:

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or

(4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

(5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more intervenors or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the above normal criteria for opening or closing conferences, with the approval of the Executive Director for Operations, conferences may either be open or closed to the public after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that the conference will be open to public observation. Consistent with the agency's policy on open meetings, "Staff Meetings Open to Public," published September 20, 1994 (59 FR 48340), the NRC intends to announce open conferences

normally at least 10 working days in advance of conferences through (1) notices posted in the Public Document Room, (2) a toll-free telephone recording at 800-952-9674, (3) a toll-free electronic bulletin board at 800-952-9676, and on the World Wide Web at the NRC Office of Enforcement homepage ([www.nrc.gov/OE](http://www.nrc.gov/OE)). In addition, the NRC will also issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences may observe but may not participate in the conference. It is noted that the purpose of conducting open conferences is not to maximize public attendance, but rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures For Providing Security Support For NRC Hearings and Meetings," published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed. The open conferences conference will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report may be made public, subject to withholding certain information (i.e., after appropriate redaction), in which case the associated predecisional enforcement conference will normally be open to public observation. In a conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference with the licensee/employer. This participation will normally be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

A predecisional enforcement conference may not need to be held in cases where there is a full adjudicatory record before the Department of Labor. If a conference is held in such

cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

## **VI. ENFORCEMENT ACTIONS**

This section describes the enforcement sanctions available to the NRC and specifies the conditions under which each may be used. The basic enforcement sanctions are Notices of Violation, civil penalties, and orders of various types. As discussed further in Section VI.D, related administrative actions such as Notices of Nonconformance, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information are used to supplement the enforcement program. In selecting the enforcement sanctions or administrative actions, the NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters.

Usually, whenever a violation of NRC requirements of more than a minor concern is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, a Notice of Violation or a Notice of Nonconformance is the normal action.

**However, circumstances regarding the violation findings may warrant discretion being exercised such that the NRC refrains from issuing a Notice of Violation or other enforcement action. (See Section VII.B, "Mitigation of Enforcement Sanctions.")**

### *A. Notice of Violation*

A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The Notice of Violation normally requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date when full compliance will be achieved. The NRC may waive all or portions of a written response to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report. The NRC may require responses to Notices of Violation to be under oath. Normally, responses under oath will be required only in connection with Severity Level I, II, or III violations or orders.

The NRC uses the Notice of Violation as the usual method for formalizing the existence of a violation. Issuance of a Notice of Violation is normally the only enforcement action taken, except in cases where the criteria for issuance of civil penalties and orders, as set forth in Sections VI.B and VI.C, respectively, are met. ~~However, special circumstances regarding the violation findings may warrant discretion being exercised such that the NRC refrains from issuing a Notice of Violation. (See Section VII.B, "Mitigation of Enforcement Sanctions.")~~ In addition, ~~licensees are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees. Accordingly, this policy should not be construed to excuse personnel errors.~~

### *B. Civil Penalty*

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee as well as by other licensees conducting similar activities and to emphasize the need for licensees to identify violations and take prompt comprehensive corrective action.

Civil penalties are considered for Severity Level III violations. In addition, civil penalties will normally be assessed for Severity Level I and II violations and knowing and conscious violations of the reporting requirements of section 206 of the Energy Reorganization Act.

Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on violations of significant regulatory concern.

Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty. Allowing mitigation in the latter case could encourage the lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

#### *1. Base Civil Penalty*

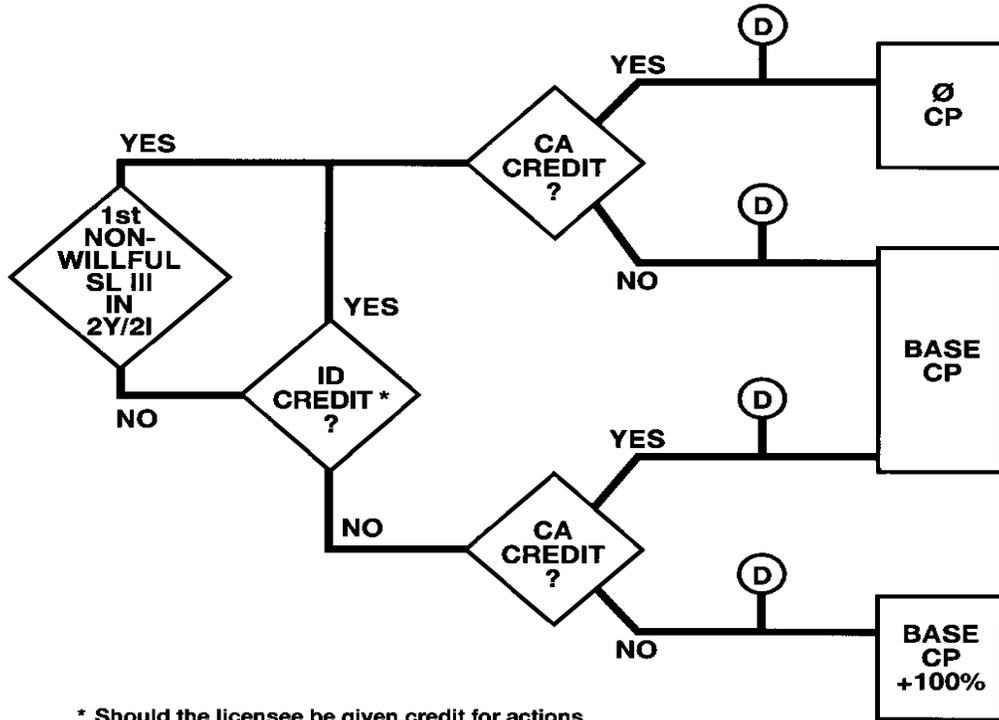
The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, vendors, and other persons. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, materials, and vendor programs. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil

penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider as necessary an increase or decrease on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

## *2. Civil Penalty Assessment*

In an effort to (1) emphasize the importance of adherence to requirements and (2) reinforce prompt self-identification of problems and root causes and prompt and comprehensive correction of violations, the NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties shown in Table 1A and 1B for Severity Level I, II, and III violations as described below.

The civil penalty assessment process considers four decisional points: (a) whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past 2 years or past 2 inspections, whichever is longer; (b) whether the licensee should be given credit for actions related to identification; (c) whether the licensee's corrective actions are prompt and comprehensive; and (d) whether, in view of all the circumstances, the matter in question requires the exercise of discretion. Although each of these decisional points may have several associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100%. The flow chart presented below is a graphic representation of the civil penalty assessment process.



\* Should the licensee be given credit for actions related to identification?

**(D)** Discretion, e.g., SL I and II violations should normally result in a civil penalty regardless of ID and CA.

**a. Initial Escalated Action**

When the NRC determines that a non-willful Severity Level 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 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 VI.B.2.c, below). Using 2 years as the basis for assessment is expected to cover most situations, but considering a slightly longer or shorter period might be warranted based on the circumstances of a particular case. The starting point of this period should be considered the date when the licensee was put on notice of the need to take corrective action. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

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

**b. Credit for Actions Related to Identification**

(1) If a Severity Level I or II violation or a willful Severity Level III violation has occurred--or if, during the past 2 years or 2 inspections, whichever is longer, the licensee has been issued at least one other escalated action--the civil penalty assessment should normally consider the factor of identification in addition to corrective action (see the discussion under Section VI.B.2.c, below). As to identification, the NRC should consider whether the licensee should be given credit for actions related to identification.

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* requires considering all the circumstances of identification including:

- (i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event<sup>8</sup> ;
- (ii) Whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of those opportunities;
- (iii) Whether the problem was revealed as the result of a licensee self-monitoring effort, such as conducting an audit, a test, a surveillance, a design review, or troubleshooting;
- (iv) For a problem revealed through an event, the ease of discovery, and the degree of licensee initiative in identifying the root cause of the problem and any associated violations;
- (v) 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;
- (vi) For NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier; and
- (vii) For cases in which the NRC identifies the overall problem requiring corrective action (e.g., a programmatic issue), the degree of licensee initiative or lack of initiative in identifying the problem or problems requiring corrective action.

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<sup>8</sup> An "event," as used here, means (1) an event characterized by an active adverse impact on equipment or personnel, readily obvious 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 to have a system 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 discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

(2) Although some cases may consider 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:

(i) **Licensee-Identified.** When a problem requiring corrective action is licensee-identified (i.e., identified before the problem has resulted in an event), the NRC should normally give the licensee credit for actions related to identification, regardless of whether prior opportunities existed to identify the problem.

(ii) **Identified Through an Event.** When a problem requiring corrective action is identified through an event, the decision on whether to give the licensee credit for actions related to identification normally should consider the ease of discovery, whether the event occurred as the result of a licensee self-monitoring effort (i.e., whether the licensee was "looking for the problem"), the degree of licensee initiative in identifying the problem or problems requiring corrective action, and whether prior opportunities existed to identify the problem.

Any of these considerations may be overriding if particularly noteworthy or particularly egregious. For example, if the event occurred as the result of conducting a surveillance or similar self-monitoring effort (i.e., the licensee was looking for the problem), the licensee should normally be given credit for identification. As a second instance, even if the problem was easily discovered (e.g., revealed by a large spill of liquid), the NRC may choose to give credit because noteworthy licensee effort was exerted in ferreting out the root cause and associated violations, or simply because no prior opportunities (e.g., procedural cautions, post-maintenance testing, quality control failures, readily observable parameter trends, or repeated or locked-in annunciator warnings) existed to identify the problem.

(iii) **NRC-Identified.** When a problem requiring corrective action is NRC-identified, the decision on whether to give the licensee credit for actions related to *Identification* should normally be based on an additional question: should the licensee have reasonably 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 might include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identifies the violation but concludes that, under the circumstances, the licensee's actions related to *Identification* were not unreasonable, the matter would be treated as licensee-identified for purposes of assessing the civil penalty. In such cases, the question of *Identification* credit shifts to whether the licensee should be penalized for NRC's identification of the problem.

(iv) **Mixed Identification.** For "mixed" identification situations (i.e., where multiple violations exist, some NRC-identified, some licensee-identified, 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 NRC 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 NRC's path of analysis had been dismissed or was being pursued in parallel by the licensee.

In some cases, the licensee may have addressed the isolated symptoms of each violation (and may have identified the violations), but failed to recognize the common root cause and taken the necessary comprehensive action. Where this is true, the decision on whether to give licensee credit for actions related to *Identification* should focus on identification of *the problem requiring corrective action* (e.g., the programmatic breakdown). As such, depending on the chronology of the various violations, the earliest of the individual violations might be considered missed opportunities for the licensee to have identified the larger problem.

(v) **Missed Opportunities to Identify.** Missed opportunities include prior notifications or missed opportunities to identify or prevent violations such as (1) through normal surveillances, audits, or quality assurance (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. It may include findings of the NRC, the licensee, or industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to take action to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, consideration will be given to, 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 should normally depend on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. Missed opportunities is normally not applied where the licensee appropriately reviewed the opportunity for application to its activities and reasonable action was either taken or planned to be taken within a reasonable time.

In some situations the missed opportunity is a violation in itself. In these cases, unless the missed opportunity is a Severity Level III violation in itself, the missed opportunity violation may be grouped with the other violations into a single Severity Level III "problem." However, if the missed opportunity is the *only* violation, then it should not normally be counted twice (i.e., both as the violation and as a missed opportunity--"double counting") unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity should also be considered. While a rigid time-frame is unnecessary, a 2-year period should generally be considered for consistency in implementation, 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, based on whether *Corrective Action* is judged to be reasonably prompt and comprehensive. When the licensee is *not* given credit for actions related to *Identification*, the civil penalty assessment should normally result in a Notice of Violation with either a base civil penalty or a base civil penalty escalated by 100%, depending on the quality of *Corrective Action*, because the licensee's performance is clearly not acceptable.

**c. Credit for Prompt and Comprehensive Corrective Action**

The purpose of the *Corrective Action* factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root 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 issuing at least a base civil penalty.

In assessing this factor, consideration will be given to the timeliness of the corrective action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's 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 to the specific violation or broadly to the general area of concern). Even in cases when the NRC, at the time of the enforcement conference, 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 root cause and are considered sufficient to prevent recurrence of the violation and similar violations.

Normally, the judgment of the adequacy of corrective actions will hinge on whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive corrective action. This will normally be judged 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*. For cases in which the licensee does not get credit for actions related to *Identification* because the NRC identified the problem, the assessment of the licensee's corrective action should begin from the time when the NRC put the licensee on notice of the problem. Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive.

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

(i) Makes a prompt decision on operability; and either

(ii) Makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition; or

(iii) Promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B, if it intends to restore the facility or procedure to the FSAR description.

**d. Exercise of Discretion**

As provided in Section VII, "Exercise of Discretion," 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 the NRC's concern regarding the violation at issue and that it conveys the appropriate message to the licensee. However, in no instance will a civil penalty for any one violation exceed \$110,000 per day.

**TABLE 1A--BASE CIVIL PENALTIES**

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a.	Power reactors and gaseous diffusion plants.....	\$110,000
b.	Fuel fabricators, industrial <del>processors</del> , <del>processors</del> , <sup>1</sup> and independent spent fuel and monitored retrievable storage installations.....	\$27,500
c.	Test reactors, mills and uranium conversion facilities, contractors, vendors, waste disposal licensees, and industrial radiographers, and other large material users .....	\$11,000
d.	Research reactors, academic, medical, or other small material licensee + users <sup>2</sup> .....	\$5,500

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<sup>1</sup> Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

<sup>2</sup> This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

**TABLE 1B--BASE CIVIL PENALTIES**

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Severity Level	Base Civil Penalty Amount (Percent of amount listed in Table 1A)
I .....	100%
II .....	80%
III .....	50%

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### *C. 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 may also be issued in lieu of, or in addition to, civil penalties, as appropriate for Severity Level I, II, or III violations. Orders may be issued as follows:

1. License Modification orders are issued when some change in licensee equipment, procedures, personnel, or management controls is necessary.
2. Suspension Orders may be used:
  - (a) To remove a threat to the public health and safety, common defense and security, or the environment;
  - (b) To stop facility construction when,
    - (i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component; or
    - (ii) The licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;
  - (c) When the licensee has not responded adequately to other enforcement action;
  - (d) When the licensee interferes with the conduct of an inspection or investigation;or
  - (e) For any reason not mentioned above for which license revocation is legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

3. Revocation Orders may be used:
  - (a) When a licensee is unable or unwilling to comply with NRC requirements;
  - (b) When a licensee refuses to correct a violation;
  - (c) When licensee does not respond to a Notice of Violation where a response was required;
  - (d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or

(e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

4. Cease and Desist Orders may be used to stop an unauthorized activity that has continued after notification by the NRC that the activity is unauthorized.

5. Orders to unlicensed persons, including vendors and contractors, and employees of any of them, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

Unless a separate response is warranted pursuant to 10 CFR 2.201, a Notice of Violation need not be issued where an order is based on violations described in the order. The violations described in an order need not be categorized by severity level.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show why the order should not be issued in the proposed manner by way of a Demand for Information. (See 10 CFR 2.204)

#### *D. Related Administrative Actions*

In addition to the formal enforcement actions, Notices of Violation, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and vendors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. Notices of Nonconformance are written notices describing vendor's failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10

CFR Part 50, Appendix B. Notices of Nonconformances request non-licensees to 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.

3. Confirmatory Action Letters are letters confirming a licensee's or vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

4. Letters of Reprimand are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.

5. Demands for Information are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.

## **VII. EXERCISE OF DISCRETION**

Notwithstanding the normal guidance contained in this policy, as provided in Section III, "Responsibilities," the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action appropriately reflects the level of NRC concern regarding the violation at issue and conveys the appropriate message to the licensee.

### *A. Escalation of Enforcement Sanctions*

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include (1) escalating civil penalties, (2) issuing appropriate orders, and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$110,000 per violation, per day.

1. *Civil penalties.* Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, the NRC may exercise discretion by either proposing a civil penalty where application of the factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty (i.e., base or twice the base civil penalty) to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message to the licensee. The Commission will be notified if the deviation in the amount of the civil penalty proposed under this discretion from the amount of the civil penalty assessed under the normal process is more than two times the base civil penalty shown in Tables 1A and 1B. Examples when this discretion should be considered include, but are not limited to the following:

- (a) Problems categorized at Severity Level I or II;

- (b) Overexposures, or releases of radiological material in excess of NRC requirements;
- (c) Situations involving particularly poor licensee performance, or involving willfulness;
- (d) Situations when the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation;
- (e) Situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase;
- (f) Situations when the licensee made a conscious decision to be in noncompliance in order to obtain an economic benefit;
- (g) Cases involving the loss of a source. In addition, unless the licensee self-identifies and reports the loss to the NRC, these cases should normally result in a civil penalty in an amount at least in the order of the cost of an authorized disposal of the material or of the transfer of the material to an authorized recipient; or
- (h) Severity Level II or III violations associated with departures from the Final Safety Analysis Report identified after two years from October 18, 1996. Such a violation or problem would consider the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted).

2. *Orders.* The NRC may, where necessary or desirable, issues orders in conjunction with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3. *Daily civil penalties.* In order to recognize the added technical safety significance or regulatory significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of \$110,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

#### *B. Mitigation of Enforcement Sanctions*

The NRC may exercise discretion and refrain from issuing a civil penalty and/or a Notice of Violation, if the outcome of the normal process described in ~~Section~~ **Sections VI.A and VI.B** does not result in a sanction consistent with an appropriate regulatory message. In addition, even if the NRC exercises this discretion, when the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report. The approval of the Director, Office of Enforcement, with consultation with the Deputy Executive Director as warranted, is required for exercising discretion of the type described in Section VII.B.1.b where a willful violation is involved, and of the types described in

Sections VII.B.2 through VII.B.6. Commission notification is required for exercising discretion of the type described in: (1) Section VII.B.2 the first time discretion is exercised during that plant shutdown, and (2) Section VII.B.6 where appropriate based on the uniqueness or significance of the issue. Examples when discretion should be considered for departing from the normal approach in Section Sections VI.A and VI.B include, but are not limited to the following:

1. *Licensee-Identified Severity Level IV Violations.* The NRC, with the approval of the Regional Administrator or his or her designee, may refrain from issuing a Notice of Violation for a Severity Level IV violation that is documented in an inspection report (or official field notes for some material cases) and described therein as a Non-Cited Violation (NCV) provided that the inspection report includes a brief description of the corrective action and that the violation meets all of the following criteria:

- (a) It was identified by the licensee;<sup>9</sup>
- (b) It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, or the period within the last two inspections, whichever is longer;
- (c) It was or will be corrected within a reasonable time, by specific corrective action committed to by the licensee by the end of the inspection, including immediate corrective action and comprehensive corrective action to prevent recurrence;
- (d) It was not a willful violation or if it was a willful violation;
  - (i) The information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional section or branch chief;
  - (ii) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.C);
  - (iii) The violation appears to be the isolated 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; and
  - (iv) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization. Although removal of the employee from licensed activities is not necessarily required, substantial disciplinary action is expected.

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<sup>9</sup> Discretion is not warranted when a licensee identifies a violation as a result of an event where the root 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. Discretion may be warranted if the licensee demonstrated initiative in identifying the violation's root cause.

2. *Violations Identified During Extended Shutdowns or Work Stoppages.* The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after (i) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or (ii) 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 official field notes for some material cases) and that it meets all of the following criteria:

- (a) It was either licensee-identified as a result of a comprehensive program for problem identification and correction that was developed in response to the shutdown or identified as a result of an employee allegation to the licensee; (If the NRC identifies the violation and all of the other criteria are met, the NRC should determine whether enforcement action is necessary to achieve remedial action, or if discretion may still be appropriate.)
- (b) It is based upon activities of the licensee prior to the events leading to the shutdown;
- (c) It would not be categorized at a severity level higher than Severity Level II;
- (d) It was not willful; and
- (e) The licensee's decision to restart the plant requires NRC concurrence.

3. *Violations Involving Old Design Issues.* The NRC may refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

- (a) It was a licensee-identified as a result of its voluntary initiative;
- (b) It was or will be corrected, including 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 caused by similar root causes); and
- (c) It was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

In addition, the NRC may refrain from issuing a Notice of Violation for ~~cases that meet a~~ **Severity Level II, III, or IV violation that meets** the above criteria provided the violation was caused by conduct that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

- (a) The NRC identifies the violation unless it was likely in the staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative (provided the schedule provides for completion of the licensee's initiative within two years after October 18, 1996;
- (b) The licensee identifies the violation as a result of an event or surveillance or other required testing where required corrective action identifies the FSAR issue;
- (c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;
- (d) There is willfulness associated with the violation;
- (e) The licensee fails to make a report required by the identification of the departure from the FSAR; or
- (f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

4. *Violations Identified Due to Previous Escalated Enforcement Action.* The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after the NRC has taken ~~escalated~~ enforcement action ~~for a Severity Level II or III violation~~, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

- (a) It was licensee-identified as part of the corrective action for the previous ~~escalated~~ enforcement action;
- (b) It has the same or similar root cause as the violation for which ~~escalated~~ enforcement action was issued;
- (c) It does not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation; and
- (d) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.
- (e) **It would not be categorized at Severity Level I;**

5. *Violations Involving Certain Discrimination Issues.* Enforcement discretion may be exercised for discrimination cases when a licensee who, 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 the overall work

environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, 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 satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (e.g., by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

6. *Violations Involving Special Circumstances.* Notwithstanding the outcome of the normal **enforcement process addressed in Section VI.A or the normal** civil penalty assessment process addressed in Section VI.B, ~~as provided in Section III, "Responsibilities,"~~ the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II ~~or~~ , 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 ~~safety~~ **technical and regulatory** significance of the violation, **the clarity of the requirement, the appropriateness of the requirement,** the overall sustained performance of the licensee has been particularly good, and other relevant circumstances, including any that may have changed since the violation. 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 by reasonable licensee quality assurance measures or management controls. 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.**

### *C. Exercise of Discretion for an Operating Facility*

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the

NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. A licensee seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether or not to issue a NOED.

The appropriate Regional Administrator, or his or her designee, may issue a NOED where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation, or his or her designee, may issue a NOED if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). The person exercising enforcement discretion will document the decision.

For an operating plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The decision to exercise enforcement discretion 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 staff has chosen to issue a NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego

enforcement is discretionary. When enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

### **VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS**

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. An enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence) failed to take required actions which have actual or potential safety significance. Most transgressions of individuals at the level of Severity Level III or IV violations will be handled by citing only the facility licensee.

More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.
- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.
- Compliance with an express direction of management, such as the Shift Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.
- Individual error directly resulting from following the technical advice of an expert unless the advice was clearly unreasonable and the licensed individual should have recognized it as such.
- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual. However, violations involving willful conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.
- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Dereliction of duty.
- Falsifying records required by NRC regulations or by the facility license.
- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.
- Submitting false information and as a result gaining unescorted access to a nuclear power plant.
- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR part 50, appendix B, or other regulatory requirement.
- Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.
- Willfully supplying, by vendors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.
- Willfully performing unauthorized bypassing of required reactor or other facility safety systems.
- Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other license conditions (enforcement action for a willful violation will not be taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10 CFR 50.54 (x), (i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)

Normally, some enforcement action is taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors' employees. In deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee, the NRC recognizes that judgments will have to be made on a case by case basis. In making these decisions, the NRC will consider factors such as the following:

1. The level of the individual within the organization.
2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing.
3. The safety consequences of the misconduct.
4. The benefit to the wrongdoer, e.g., personal or corporate gain.
5. The degree of supervision of the individual, i.e., how closely is the individual monitored or audited, and the likelihood of detection (such as a radiographer working independently in the field as contrasted with a team activity at a power plant).
6. The employer's response, e.g., disciplinary action taken.
7. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.
8. The degree of management responsibility or culpability.
9. Who identified the misconduct.

Any proposed enforcement action involving individuals must be issued with the concurrence of the Deputy Executive Director. The particular sanction to be used should be determined on a case-by-case basis.<sup>10</sup> Notices of Violation and Orders are examples of enforcement actions that may be appropriate against individuals. The administrative action of a Letter of Reprimand may also be considered. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other enforcement action should be issued.

Orders to NRC-licensed reactor operators may involve suspension for a specified period, modification, or revocation of their individual licenses. Orders to unlicensed individuals might include provisions that would:

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<sup>10</sup> Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

- Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing specified training or meeting certain qualifications.
- Require notification to the NRC before resuming work in licensed activities.
- Require the person to tell a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a Notice of Violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a Notice of Violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties or evidence of prolonged use. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to 3 years the second time a licensed operator exceeds those cutoff levels. In the event there are less than 3 years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the Part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is also subject to license suspension, revocation, or denial.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in 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, appropriate enforcement actions may be taken regarding matters that raise issues of integrity, competence, fitness-for-duty, or other matters that may not necessarily be a violation of specific Commission requirements.

In the case of an unlicensed person, whether a firm or an individual, an order modifying the facility license may be issued to require (1) the removal of the person from all licensed activities for a specified period of time or indefinitely, (2) prior notice to the NRC before utilizing the person in licensed activities, or (3) the licensee to provide notice of the issuance of such an order to other persons involved in licensed activities making reference inquiries. In addition, orders to employers might require retraining, additional oversight, or independent verification of activities performed by the person, if the person is to be involved in licensed activities.

## **IX. INACCURATE AND INCOMPLETE INFORMATION**

A violation of the regulations involving submittal of incomplete and/or inaccurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement 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 normally will be categorized based on the guidance herein, in Section IV, "Severity of Violations," and in Supplement VII.

The Commission recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, the Commission must be able to rely on oral communications from licensee officials concerning significant information. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to factors such as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or 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 information which was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent 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 official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a Notice of Violation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available or the advancement in technology was made, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding 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 later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected

was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described in this section.

## **X. ENFORCEMENT ACTION AGAINST NON-LICENSEES**

The Commission's enforcement policy is also applicable to non-licensees, including employees of licensees, to contractors and subcontractors, and to employees of contractors and subcontractors, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Vendors of products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with reactor licensees, vendors may be required to have quality assurance programs that meet applicable requirements including 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Vendors supplying products or services to reactor, materials, and 10 CFR Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments (e.g., 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their vendors have programs that meet applicable requirements. Notices of Violation will be issued for vendors that violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a vendor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for vendors which fail to meet commitments related to NRC activities.

## **XI. REFERRALS TO THE DEPARTMENT OF JUSTICE**

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice (DOJ) for investigation. Referral to the DOJ does not preclude the NRC from taking other enforcement action under this policy. However, enforcement actions will be coordinated with the DOJ in accordance with the Memorandum of Understanding between the NRC and the DOJ, 53 FR 50317 (December 14, 1988).

## **XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS**

Enforcement actions and licensees' responses, in accordance with 10 CFR 2.790, are publicly available for inspection. In addition, press releases are generally issued for orders and civil penalties and are issued at the same time the order or proposed imposition of the civil penalty is issued. In addition, press releases are usually issued when a proposed civil penalty is withdrawn or substantially mitigated by some amount. Press releases are not normally issued for Notices of Violation that are not accompanied by orders or proposed civil penalties.

### **XIII. REOPENING CLOSED ENFORCEMENT ACTIONS**

If significant new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director.

### **APPENDIX A: SAFETY AND COMPLIANCE**

As commonly understood, safety means freedom from exposure to danger, or protection from harm. In a practical sense, an activity is deemed to be safe if the perceived risks are judged to be acceptable. The Atomic Energy Act of 1954, as amended, establishes "adequate protection" as the standard of safety on which NRC regulation is based. In the context of NRC regulation, safety means avoiding undue risk or, stated another way, providing reasonable assurance of adequate protection for the public in connection with the use of source, byproduct and special nuclear materials.

The definition of compliance is much simpler. Compliance simply means meeting applicable regulatory requirements. The relationship between compliance and safety is discussed below.

- Safety is the fundamental regulatory objective, and compliance with NRC requirements plays a fundamental role in giving the NRC confidence that safety is being maintained. NRC requirements, including technical specifications, other license conditions, orders, and regulations, have been designed to ensure adequate protection--which corresponds to "no undue risk to public health and safety"--through acceptable design, construction, operation, maintenance, modification, and quality assurance measures. In the context of risk-informed regulation, compliance plays a very important role in ensuring that key assumptions used in underlying risk and engineering analyses remain valid.
- Adequate protection is presumptively assured by compliance with NRC requirements. Circumstances may arise, however, where new information reveals, for example, that an unforeseen hazard exists or that there is a substantially greater potential for a known hazard to occur. In such situations, the NRC has the statutory authority to require licensee action above and beyond existing regulations to maintain the level of protection necessary to avoid undue risk to public health and safety.
- The NRC 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 non-compliances occur, the NRC must evaluate the degree of risk posed by that non-compliance to determine if specific immediate action is required. Where needed to ensure adequate protection of public health and safety, the NRC may demand immediate licensee action, up to and including a shutdown or cessation of licensed activities. In addition, in determining the appropriate action to be taken, the NRC must evaluate the non-compliance both in terms of its direct safety and regulatory significance and by assessing whether it is part of a pattern of non-compliance (i.e., the degree of pervasiveness) that can lead to the determination that licensee control processes are no longer adequate to ensure protection of the public health and safety. Based on the NRC's evaluation, the appropriate action could include refraining from taking any action, taking specific enforcement action, issuing orders, or providing input to other regulatory actions or assessments, such as increased oversight (e.g., increased inspection).

- Since some requirements are more important to safety than others, the Commission should use a risk-informed approach wherever when applying NRC resources to the oversight of licensed activities (this includes enforcement).

## **APPENDIX B: SUPPLEMENTS - ENFORCEMENT EXAMPLES**

This appendix provides examples of violations in each of four severity levels as guidance in determining the appropriate severity level for violations in each of eight activity areas (reactor operations, Part 50 facility construction, safeguards, health physics, transportation, fuel cycle and materials operations, miscellaneous matters, and emergency preparedness).

### **SUPPLEMENT I--REACTOR OPERATIONS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

A. *Severity Level I* - Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications being exceeded;
2. A system<sup>11</sup> designed to prevent or mitigate a serious safety event not being able to perform its intended safety function<sup>12</sup> when actually called upon to work;
3. An accidental criticality; or

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<sup>11</sup> The term "system" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

<sup>12</sup> "Intended 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 licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. *Severity Level II* - Violations involving for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function;

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

3. A licensed operator at the control of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol; or

4. Failures to meet 10 CFR 50.59 including several unreviewed safety questions, or conflicts with technical specifications, involving a broad spectrum of problems affecting multiple areas, some of which impact the operability of required equipment.

C. *Severity Level III* - Violations involving for example:

1. A significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, in the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement; or

(b) In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement.

2. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability (e.g., component parameters outside approved limits such as pump flow rates, heat exchanger transfer characteristics, safety valve lift setpoints, or valve stroke times);

3. Inattentiveness to duty on the part of licensed personnel;

4. Changes in reactor parameters that cause unanticipated reductions in margins of safety;
  5. [Reserved]
  6. A licensee failure to conduct adequate oversight of vendors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;
  7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;
  8. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation;
  9. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;
  10. The failure to meet 10 CFR 50.59 where an unreviewed safety question is involved, or a conflict with a technical specification, such that a license amendment is required;
  11. The failure to perform the required evaluation under 10 CFR 50.59 prior to implementation of the change in those situations in which no unreviewed safety question existed, but an extensive evaluation would be needed before a licensee would have had a reasonable expectation that an unreviewed safety question did not exist;
  12. Programmatic failures (i.e., multiple or recurring failures) to meet the requirements of 10 CFR 50.59 and/or 50.71(e) that show a significant lack of attention to detail, whether or not such failures involve an unreviewed safety question, resulting in a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met. Application of this example requires weighing factors such as: a) the time period over which the violations occurred and existed, b) the number of failures, c) whether one or more systems, functions, or pieces of equipment were involved and the importance of such equipment, functions, or systems, and d) the potential significance of the failures;
  13. The failure to update the FSAR as required by 10 CFR 50.71(e) where the unupdated FSAR was used in performing a 10 CFR 50.59 evaluation and as a result, an inadequate decision was made demonstrating a significant regulatory concern; or
  14. The failure to make a report required by 10 CFR 50.72 or 50.73 associated with (a) an unreviewed safety question, (b) a conflict with a technical specification, or (c) any other Severity Level III violation.
- D. *Severity Level IV* - Violations involving for example:

1. A less significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

(b) In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable;

2. [Reserved]

3. A failure to meet regulatory requirements that have more than minor safety or environmental significance;

4. A failure to make a required Licensee Event Report;

5. Relatively isolated violations of 10 CFR 50.59 not involving severity level II or III violations that do not suggest a programmatic failure to meet 10 CFR 50.59. Relatively isolated violations or failures would include a number of recently discovered violations that occurred over a period of years and are not indicative of a programmatic safety concern with meeting 10 CFR 50.59 or 50.71(e);

6. A relatively isolated failure to document an evaluation where there is evidence that an adequate evaluation was performed prior to the change in the facility or procedures, or the conduct of an experiment or test;

7. A failure to update the FSAR as required by 10 CFR 50.71(e) where an adequate evaluation under 10 CFR 50.59 had been performed and documented; or

8. A past programmatic failure to meet 10 CFR 50.59 and/or 10 CFR 50.71(e) requirements not involving Severity Level II or III violations that does not reflect a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met.

#### E. Minor Violations

A failure to meet 10 CFR 50.59 requirements that involves a change to the FSAR description or procedure, or involves a test or experiment not described in the FSAR, where there was not a reasonable likelihood that the change to the facility or procedure or the conduct of the test or experiment would ever be an unreviewed safety question. In the case of a 10 CFR 50.71(e) violation, where a failure to update the FSAR would not have a material impact on safety or licensed activities. The focus of the minor violation is not on the actual change, test, or experiment, but on the potential safety role of the system, equipment, etc that is being changed, tested, or experimented on.

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of Part 50 facility construction.

A. *Severity Level I* - Violations involving structures or systems that are completed<sup>13</sup> in such a manner that they would not have satisfied their intended safety related purpose.

B. *Severity Level II* - Violations involving for example:

1. A breakdown in the Quality Assurance (QA) program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). These deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. *Severity Level III* - Violations involving for example:

1. A deficiency in a licensee QA program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). This significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. A failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. A failure to make a required 10 CFR 50.55(e) report.

D. *Severity Level IV* - Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

### **SUPPLEMENT III--SAFEGUARDS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of safeguards.

A. *Severity Level I* - Violations involving for example:

1. An act of radiological sabotage in which the security system did not function as required and, as a result of the failure, there was a significant event, such as:

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<sup>13</sup> The term "completed" as used in this supplement means completion of construction including review and acceptance by the construction QA organization.

(a) A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, was exceeded;

(b) A system designed to prevent or mitigate a serious safety event was not able to perform its intended safety function when actually called upon to work; or

(c) An accidental criticality occurred;

2. The theft, loss, or diversion of a formula quantity<sup>14</sup> of special nuclear material (SNM); or

3. Actual unauthorized production of a formula quantity of SNM

B. *Severity Level II* - Violations involving for example:

1. The entry of an unauthorized individual<sup>15</sup> who represents a threat into a vital area<sup>16</sup> from outside the protected area;

2. The theft, loss or diversion of SNM of moderate strategic significance<sup>17</sup> in which the security system did not function as required; or

3. Actual unauthorized production of SNM.

C. *Severity Level III* - Violations involving for example:

1. A failure or inability to control access through established systems or procedures, such that an unauthorized individual (i.e., not authorized unescorted access to protected area) could easily gain undetected access<sup>18</sup> into a vital area from outside the protected area;

2. A failure to conduct any search at the access control point or conducting an inadequate search that resulted in the introduction to the protected area of firearms, explosives, or incendiary devices and reasonable facsimiles thereof that could significantly assist radiological sabotage or theft of strategic SNM;

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<sup>14</sup> See 10 CFR 73.2 for the definition of "formula quantity."

<sup>15</sup> The term "unauthorized individual" as used in this supplement means someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

<sup>16</sup> The phrase "vital area" as used in this supplement includes vital areas and material access areas.

<sup>17</sup> See 10 CFR 73.2 for the definition of "special nuclear material of moderate strategic significance."

<sup>18</sup> In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

3. A failure, degradation, or other deficiency of the protected area intrusion detection or alarm assessment systems such that an unauthorized individual who represents a threat could predictably circumvent the system or defeat a specific zone with a high degree of confidence without insider knowledge, or other significant degradation of overall system capability;

4. A significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of strategic SNM;

5. A failure to protect or control classified or safeguards information considered to be significant while the information is outside the protected area and accessible to those not authorized access to the protected area;

6. A significant failure to respond to an event either in sufficient time to provide protection to vital equipment or strategic SNM, or with an adequate response force;

7. A failure to perform an appropriate evaluation or background investigation so that information relevant to the access determination was not obtained or considered and as a result a person, who would likely not have been granted access by the licensee, if the required investigation or evaluation had been performed, was granted access; or

8. A breakdown in the security program involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. *Severity Level IV* - Violations involving for example:

1. A failure or inability to control access such that an unauthorized individual (i.e., authorized to protected area but not to vital area) could easily gain undetected access into a vital area from inside the protected area or into a controlled access area;

2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;

3. A failure to implement 10 CFR Parts 25 and 95 with respect to the information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

4. A failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71 (c) and (d), where the omitted information (i) is not otherwise available in easily retrievable records, and (ii) significantly contributes to the ability of either the NRC or the licensee to identify a programmatic breakdown;

5. A failure to conduct a proper search at the access control point;

6. A failure to properly secure or protect classified or safeguards information inside the protected area which could assist an individual in an act of radiological sabotage or theft of strategic SNM where the information was not removed from the protected area;

7. A failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area but which was neither easily or likely to be exploitable;

8. A failure to conduct an adequate search at the exit from a material access area;

9. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation; or

10. Other violations that have more than minor safeguards significance.

#### **SUPPLEMENT IV--HEALTH PHYSICS (10 CFR PART 20)**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of health physics, 10 CFR Part 20.<sup>19</sup>

A. *Severity Level I* - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 25 rems total effective dose equivalent, 75 rems to the lens of the eye, or 250 rads to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 2.5 rems total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 2.5 rems total effective dose equivalent, 7.5 rems to the lens of the eye, or 25 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 1.0 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i); or

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

B. *Severity Level II* - Violations involving for example:

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<sup>19</sup> Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

1. A radiation exposure during any year of a worker in excess of 10 rems total effective dose equivalent, 30 rems to the lens of the eye, or 100 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;
  2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem total effective dose equivalent;
  3. A radiation exposure during any year of a minor in excess of 1 rem total effective dose equivalent; 3.0 rems to the lens of the eye, or 10 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;
  4. An annual exposure of a member of the public in excess of 0.5 rem total effective dose equivalent;
  5. A release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));
  6. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.2003; or
  7. A failure to make an immediate notification as required by 10 CFR 20.2202 (a)(1) or (a)(2).
- C. *Severity Level III* - Violations involving for example:
1. A radiation exposure during any year of a worker in excess of 5 rems total effective dose equivalent, 15 rems to the lens of the eye, or 50 rems to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;
  2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 0.5 rem total effective dose equivalent (except when doses are in accordance with the provisions of Section 20.1208(d));
  3. A radiation exposure during any year of a minor in excess of 0.5 rem total effective dose equivalent; 1.5 rems to the lens of the eye, or 5 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;
  4. A worker exposure above regulatory limits when such exposure reflects a programmatic (rather than an isolated) weakness in the radiation control program;
  5. An annual exposure of a member of the public in excess of 0.1 rem total effective dose equivalent (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));
  6. A release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits referenced in 10 CFR 20.1302(b)(2)(i)

(except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

7. 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);

8. A substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20 Sections 20.1001-20.2401 whether or not an exposure or release occurs;

9. Disposal of licensed material not covered in Severity Levels I or II;

10. A release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public to levels or doses exceeding the annual dose limits for members of the public, or that reflects a programmatic (rather than an isolated) weakness in the radiation control program;

11. Conduct of licensee activities by a technically unqualified person;

12. A significant failure to control licensed material; or

13. A breakdown in the radiation safety program involving a number of violations that are related (or, if isolated, that are recurring) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. *Severity Level IV* - Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.1201, 20.1207, or 20.1208 not constituting Severity Level I, II, or III violations;

2. A release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem in any 1 hour (2 millirem/hour) or 50 millirems in a year;

4. Failure to maintain and implement radiation programs to keep radiation exposures as low as is reasonably achievable;

5. Doses to a member of the public in excess of any EPA generally applicable environmental radiation standards, such as 40 CFR Part 190;

6. A failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 20.2203(a);

7. A failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206;
8. A failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d); or
9. Any other matter that has more than a minor safety, health, or environmental significance.

### **SUPPLEMENT V - TRANSPORTATION**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of NRC transportation requirements<sup>20</sup>.

A. *Severity Level I* - Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that the material caused a radiation exposure to a member of the public and there was clear potential for the public to receive more than .1 rem to the whole body;
2. Surface contamination in excess of 50 times the NRC limit; or
3. External radiation levels in excess of 10 times the NRC limit.

B. *Severity Level II* - Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem to the whole body;
2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;
3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or
4. A failure to make required initial notifications associated with Severity Level I or II violations.

C. *Severity Level III* - Violations involving for example:

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<sup>20</sup> Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper and a carrier. When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

1. Surface contamination in excess of five but not more than 10 times the NRC limit;
  2. External radiation in excess of one but not more than five times the NRC limit;
  3. Any noncompliance with labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in 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; or
    - (c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material;
  4. A failure to make required initial notification associated with Severity Level III violations; or
  5. A breakdown in the licensee's program for the transportation of licensed material involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.
- D. *Severity Level IV* - Violations involving for example:
1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limits;
  2. Surface contamination in excess of but not more than five times the NRC limit;
  3. A failure to register as an authorized user of an NRC-Certified Transport package;
  4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;
  5. A failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;
  6. A failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or
  7. Other violations that have more than minor safety or environmental significance.

## **SUPPLEMENT VI--FUEL CYCLE AND MATERIALS OPERATIONS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle and materials operations.

A. *Severity Level I* - Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;
2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function;
3. A nuclear criticality accident;
4. A failure to follow the procedures of the quality management program, required by 10 CFR 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient;
5. A safety limit, as defined in 10 CFR 76.4, the Technical Safety Requirements, or the application being exceeded; or
6. Significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not.

B. *Severity Level II* - Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license;
2. A system designed to prevent or mitigate a serious safety event being inoperable;
3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration;
4. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or
5. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (e.g., movement of liquid UF<sub>6</sub> cylinder by unapproved methods).

C. *Severity Level III* - Violations involving for example:

1. A failure to control access to licensed materials for radiation protection purposes as specified by NRC requirements;

2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;
3. Use of radioactive material on humans where such use is not authorized;
4. Conduct of licensed activities by a technically unqualified or uncertified person;
5. A substantial potential for exposures, radiation levels, contamination levels, or releases, including releases of toxic material caused by a failure to comply with NRC regulations, from licensed or certified activities in excess of regulatory limits;
6. Substantial failure to implement the quality management program as required by 10 CFR 35.32 that does not result in a misadministration; failure to report a misadministration; or programmatic weakness in the implementation of the quality management program that results in a misadministration;
7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;
8. A failure, during radiographic operations, to have present at least two qualified individuals or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34;
9. A failure to submit an NRC Form 241 as required by 10 CFR 150.20;
10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet the safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance;
11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification;
12. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:
  - (a) In an autoclave, where a containment isolation valve is inoperable for a period in excess of that allowed by the action statement; or

(b) Cranes or other lifting devices engaged in the movement of cylinders having inoperable safety components, such as redundant braking systems, or other safety devices for a period in excess of that allowed by the action statement;

13. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless utilities available, materials or components not according to specifications); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;

14. Changes in parameters that cause unanticipated reductions in margins of safety;

15. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought;

16. A failure of the certificate holder to conduct adequate oversight of vendors or contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

17. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

18. A failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

19. A failure, during radiographic operations, to stop work after a pocket dosimeter is found to have gone off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination is made of the individual's actual radiation exposure.

D. *Severity Level IV* - Violations involving for example:

1. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance;

3. Failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

4. A failure to keep the records required by 10 CFR 35.32 or 35.33;

5. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

6. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

7. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

8. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but could have been sufficient to result in a nuclear criticality.

### **SUPPLEMENT VII--MISCELLANEOUS MATTERS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

A. *Severity Level I* - Violations involving for example:

1. Inaccurate or incomplete information<sup>21</sup> that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information that the licensee has identified as having significant implications for public health and safety or the common defense and security ("significant information identified by a licensee") and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

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<sup>21</sup> In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference should also be made to the guidance in Section IX, "Inaccurate and Incomplete Information," and to the definition of "licensee official" contained in Section IV.C.

6. A failure to substantially implement the required fitness-for-duty program.<sup>22</sup>

B. *Severity Level II* - Violations involving for example:

1. Inaccurate or incomplete information that is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

4. An action by plant management ~~above first-line supervision~~ or **mid-level management** in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A failure to provide the notice required by 10 CFR Part 21;

6. A failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

7. A failure to take reasonable action when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use;

8. A deliberate failure of the licensee's Employee Assistance Program (EAP) to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities; or

9. The failure of licensee management to take effective action in correcting a hostile work environment.

C. *Severity Level III* - Violations involving for example:

1. Incomplete or inaccurate information that is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

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<sup>22</sup> The example for violations for fitness-for-duty relate to violations of 10 CFR Part 26.

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. A failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;

4. An action by first-line supervision or other low-level management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR Part 21 report would have been made;

6. A failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;

7. A failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;

8. A failure to assure, as required, that contractors or vendors have an effective fitness-for-duty program;

9. A breakdown in the fitness-for-duty program involving a number of violations of the basic elements of the fitness-for-duty program that collectively reflect a significant lack of attention or carelessness towards meeting the objectives of 10 CFR 26.10; or

10. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as 10 CFR 50.7(f).

D. *Severity Level IV* - Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance that is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information that the NRC requires be kept by a licensee and that is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation;

3. An inadequate review or failure to review under 10 CFR Part 21 or other procedural violations associated with 10 CFR Part 21 with more than minor safety significance;

4. Violations of the requirements of Part 26 of more than minor significance;
5. A failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73; or
6. Discrimination cases which, in themselves, do not warrant a Severity Level III categorization.

### **SUPPLEMENT VIII--EMERGENCY PREPAREDNESS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of emergency preparedness. It should be noted that citations are not normally made for violations involving emergency preparedness occurring during emergency exercises. However, where exercises reveal (i) training, procedural, or repetitive failures for which corrective actions have not been taken, (ii) an overall concern regarding the licensee's ability to implement its plan in a manner that adequately protects public health and safety, or (iii) poor self critiques of the licensee's exercises, enforcement action may be appropriate.

A. *Severity Level I* - Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff.)

B. *Severity Level II* - Violations involving for example:

1. In a site emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. *Severity Level III* - Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff);

2. A licensee failure to meet or implement one emergency planning standard involving assessment or notification; or

3. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. *Severity Level IV* - Violations involving for example:

A licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

Dated at Rockville, MD, this      day of      ~~December, 1996~~, 1997.

For the Nuclear Regulatory Commission.

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John C. Hoyle,  
Secretary of the Commission.

----- COMPARISON OF FOOTNOTES -----

-FOOTNOTE 1-

Copies of NUREG-1622 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001. The report is also included on the NRC's Office of Enforcement's homepage on the Internet at [www.nrc.gov/OE/](http://www.nrc.gov/OE/).

-FOOTNOTE 1-

Antitrust enforcement matters will be dealt with on a case-by-case basis.

-FOOTNOTE 2-

The term "vendor" as used in this policy means a supplier of products or services to be used in an NRC-licensed facility or activity.

-FOOTNOTE 3-

This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. Therefore, the term "licensee" is used throughout the policy. However, in those cases where the NRC determines that it is appropriate to take enforcement action against a non-licensee or individual, the guidance in this policy will be used, as applicable. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

-FOOTNOTE 4-

The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

-FOOTNOTE 5-

The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

-FOOTNOTE 6-

~~A Non-Cited Violation (NCV) is a violation that has not been formalized into a 10 CFR 2.204 Notice of Violation.~~

-FOOTNOTE 7 6-

The term "repetitive violation" or "similar violation" as used in this policy statement means a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation normally occurring (1) within the past 2 years of the inspection at issue, or (2) the period within the last two inspections, whichever is longer.

-FOOTNOTE 8 7-

The term "licensee official" as used in this policy statement 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, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

**-FOOTNOTE 9 8-**

An "event," as used here, means (1) an event characterized by an active adverse impact on equipment or personnel, readily obvious 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 to have a system 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 discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

**-FOOTNOTE 9-**

Discretion is not warranted when a licensee identifies a violation as a result of an event where the root 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. Discretion may be warranted if the licensee demonstrated initiative in identifying the violation's root cause.

**-FOOTNOTE 10-**

Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

**-FOOTNOTE 11-**

The term "system" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

**-FOOTNOTE 12-**

"Intended 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.

**-FOOTNOTE 13-**

The term "completed" as used in this supplement means completion of construction including review and acceptance by the construction QA organization.

-FOOTNOTE 14-

See 10 CFR 73.2 for the definition of "formula quantity."

-FOOTNOTE 15-

The term "unauthorized individual" as used in this supplement means someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

-FOOTNOTE 16-

The phrase "vital area" as used in this supplement includes vital areas and material access areas.

-FOOTNOTE 17-

See 10 CFR 73.2 for the definition of "special nuclear material of moderate strategic significance."

-FOOTNOTE 18-

In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

-FOOTNOTE 19-

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

-FOOTNOTE 20-

Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper and a carrier. When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

-FOOTNOTE 21-

In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference should also be made to the guidance in Section IX, "Inaccurate and Incomplete Information," and to the definition of "licensee official" contained in Section IV.C.

-FOOTNOTE 22-

The example for violations for fitness-for-duty relate to violations of 10 CFR Part 26.