4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly-available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2014–0192. You may submit your comments by any of the following methods: Electronic comments go to *http://www.regulations.gov* and search for Docket No. NRC–2014–0192. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 6th day of October , 2014.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–24116 Filed 10–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271–LA; ASLBP No. 15–934–01–LA–BD01]

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding: Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., (Vermont Yankee Nuclear Power Station).

This proceeding involves an application by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. for a license amendment for the Vermont Yankee Nuclear Power Station, which is located in Vernon, Vermont. In response to a notice filed in the **Federal Register**, *see* 79 FR 42,546 (July 22, 2014), a hearing request was filed via the Electronic Information Exchange on September 24, 2014 by the State of Vermont through the Vermont Department of Public Service.

The Board is comprised of the following administrative judges:

E. Roy Hawkens, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard E. Wardwell, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.

Dated: October 3, 2014.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2014–24164 Filed 10–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0221]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments from interested parties, including public interest groups, States, members of the public, and the regulated industry (i.e., reactor, fuel cycle, and material licensees, vendors, and contractors), on proposed revisions to its Enforcement Policy (the Policy). The intent of this request for comment is to assist the NRC in revising its Enforcement Policy.

DATES: Submit comments by November 24, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0221. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN–6A44MP, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2872; email: *Gerald.Gulla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0221 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0221.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public

Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The Enforcement Policy is available in ADAMS under Accession No. ML12340A295.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Public Web site:* Go to *http://www.nrc.gov* and select ''Public Meetings and Involvement,'' then ''Enforcement,'' and then ''Enforcement Policy.''

B. Submitting Comments

Please include Docket ID NRC–2014–0221 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The mission of the NRC is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear material to ensure adequate protection of public health and safety, promote the common defense and security, and protection of the environment. The NRC supports this mission through its use of its Enforcement Policy (the Policy). Adequate protection is presumptively assured by compliance with the NRC's regulations and the Policy contains the basic procedures used to assess and disposition apparent violations of the NRC's requirements.

The Policy has undertaken a number of revisions since its initial publication in the **Federal Register** on October 7, 1980 (45 FR 66754), as an interim policy. On August 27, 2010, in a Staff Requirements Memorandum (SRM), SRM–SECY–09–0190 ''Recommendations for Reactor Oversight Process Improvements,'' the Commission approved a major revision to the Policy. On September 30, 2010 (75 FR 60485), the NRC published a notice to announce an effective date of September 30, 2010, for the revision to the Policy. This notice included a solicitation of comments on the revised Policy for approximately 18 months after its effective date. The NRC staff previously solicited comments on other SRM–SECY–09–0190 items in documents published in the **Federal Register** on August 9, 2011 (76 FR 48919), September 6, 2011 (76 FR 54986), and December 6, 2011 (76 FR 76192). The Policy was revised on January 28, 2013 (78 FR 5838), to incorporate the aforementioned solicited comments. The current Policy is available in ADAMS under Accession No. ML13228A199.

The purpose of this **Federal Register** notice is to solicit comments on the following proposed revisions.

III. Proposed Revisions to the Enforcement Policy

1. Violation Examples

a. 6.3 Materials Operations

The Policy addresses the failure to secure a portable gauge as required by 10 CFR 30.34(i) under Section 6.3, ''Materials Operations.'' Specifically, paragraph 6.3.c.3, a severity level (SL) III example, states, ''A licensee fails to secure a portable gauge with at least two independent physical controls whenever the gauge is not under the control and constant surveillance of the licensee as required by 10 CFR 30.34(i).'' Accordingly, a violation of the 10 CFR 30.34(i) requirements constitutes a SL III violation for gauges having either no security or one level of security. The SL III significance is based largely on licensees' control of portable gauges to reduce the opportunity for unauthorized removal or theft and is the only example currently provided in the Policy.

When assessing the significance of a violation involving the failure to secure the portable gauge, the NRC considers that both of the physical controls must be defeated for the portable gauge to be removed deterring a theft by requiring a more determined effort to remove the gauge. Considering the reduced risk associated with having one barrier instead of no barrier, a graded approach is appropriate for 10 CFR 30.34(i) violations of lower significance. Therefore, the NRC believes that certain failures to secure portable gauges warrant a SL IV designation. This graded approach was piloted in Enforcement Guidance Memoranda 11–004, dated April 28, 2011 (ADAMS Accession No. ML111170601). After over 2 years of monitoring, it was determined that the addition of the SL IV example did not increase the number of losses/thefts reported. Therefore, the NRC is proposing to add a SL IV example.

Proposed revision:

6.3.d.10 A licensee fails to secure a portable gauge as required by 10 CFR 30.34(i), whenever the gauge is not under the control and constant surveillance of the licensee, where at least one level of physical control existed and there was no actual loss of material, and that failure is not repetitive.

b. 6.4 Licensed Reactor Operators

The NRC is proposing miscellaneous clarifications to the current violation examples listed in this section. This revision is necessary to more closely align the wording used in Section 6.4 of the Policy with the wording used in 10 CFR 55.53(j).

Proposed revisions:

6.4.a/b/c.1.(a) unfit for duty as a result of a confirmed positive test for drugs or alcohol at the lower of the cutoff levels for drugs or alcohol contained in 10 CFR part 26, or as established by the facility licensee, or

6.4.a/b/c.1.(b) mentally or physically impaired as a result of substance use including prescription and over-the-counter drugs as described in 10 CFR 55.53(j), or

6.4.a.1.(c) and 6.4.b/c.1.(d) impaired by fatigue such that the individual could not safely and competently perform his or her duties, as determined by a post event fatigue assessment required by 10 CFR 26.211(a)(3).

6.4.c.3 A licensed operator or senior operator is involved in the use, sale, or possession of illegal drugs on or off site.

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

Under 6.9.c.2.(c), the NRC is proposing to remove the reference to 10 CFR 26.719(d) because it is not a reporting requirement.

Proposed revision to 6.9.c.2.(c): failure to make any report required by 10 CFR 73.71, ''Reporting of Safeguards

Events,'' or appendix G, ''Reportable Safeguards Events,'' to 10 CFR part 73 ''Physical Protection of Plants and Materials,'' or 10 CFR part 26, ''Fitness-For-Duty Programs.''

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

The current Policy examples for a SL IV violation are focused on the ''loss of special nuclear material (SNM) of low strategic significance.'' The loss of SNM is too narrow of a focus on the loss of material and not the other aspects of the Materials Control & Accountability (MC&A) program that could be a precursor to a loss of SNM. The Policy should have an example for MC&A at the fuel facilities that cover the reduction in the ability to detect a loss or diversion of material which could lead to a more significant event.

New Violation Example:

6.11.d.3 A deficiency in the licensee's MC&A system that results in a fuel cycle facility General Performance Objective(s) degradation, referenced in §§ 74.31, 74.33, 74.41, or 74.51, regarding adequate detection or protection against loss, theft, or diversion of SNM.

e. 6.14 Fitness-for-Duty

(1) Incorporate violation example 6.14.a.2 in 6.14.b.1. An employee assistance program (EAP) is one provision of many contained in 10 CFR part 26, subpart B, for which 6.14.a.1 applies. Therefore, the ''severity'' associated with an inadequate EAP is significantly less than that of a licensee not meeting ''two or more subparts of 10 CFR part 26.'' An ineffective implementation of an EAP does not result in a safety or security concern and should not represent a SL I violation.

Proposed Revision: Delete 6.14.a.2.

6.14.b.1 A licensee fails to remove an individual from unescorted access status when this person has been involved in the sale, use, or possession of illegal drugs within the protected area, or a licensee fails to take action in the case of an on-duty misuse of alcohol, illegal drugs, prescription drugs, or over the counter medications or when notified by a licensee employee assistance program that an individual poses an immediate threat to himself, herself or others;

(2) In violation example 6.14.b.2 remove the verbiage ''unfitness for duty based on drug or alcohol use.'' Part 26 does not define unfitness and the behavioral observation program is not limited to just drugs and alcohol impairment.

Proposed Revision to 6.14.b.2: A licensee fails to take action to meet a regulation or a licensee behavior observation program requirement when observed behavior within the protected area or credible information concerning the activities of an individual indicates impairment by any substance, legal or illegal, or mentally or physically impaired from any cause, which adversely affects their ability to safely and competently perform their duties.

(3) Violation example 6.14.c.1 should encompass more than just drug and alcohol positive tests; it should include other aspects of the program such as subversions.

Proposed Revision to 6.14.c.1: A licensee fails to take the required action for a person who has violated the licensee's Fitness-For-Duty policy, in cases that do not amount to a SL II violation;

(4) Violation example 6.14.c.5 should be deleted. It has been incorporated under the proposed revision 6.14.b.1.

Proposed revision: Delete 6.14.c.5

2. Construction Reactor Oversight Process (cROP)

a. Table of Contents

The Table of Contents will be revised to incorporate the implementation of the cROP into the Policy. This will require a revision to the titles of Sections 2.2.3 and 2.2.4. There are also other miscellaneous cROP related reference revisions throughout the Policy. Section 2.2.6, ''Construction,'' will be split into two sections: Section 2.2.6 to addresses construction activities at production and utilization facilities, and a new section (2.2.7), was created to discuss construction at fuel processing and fabrication facilities.

b. Section 2.2 Assessment of Violations

Section 2.2 will be modified to add the implementation of the cROP to the Policy.

Proposed revision: After a violation is identified, the NRC assesses its severity or significance (both actual and potential). Under traditional enforcement, the severity level (SL) assigned to the violation generally reflects the assessment of the significance of a violation, and is referred to as traditional enforcement. For most violations committed by power reactor licensees, the significance of a violation is assessed using the significance determination process (SDP) under the Reactor Oversight Process (ROP) or under the Construction Reactor Oversight Process (cROP), as discussed below in Section 2.2.3, ''Assessment of Violations Identified Under the ROP and cROP.'' All other violations will be assessed using traditional enforcement as described in Section 2.2.4, ''Exceptions to Using an SDP for the Assessment of Violations Identified Under the ROP or cROP.'' Traditional enforcement will be used for facilities that are not subject to an SDP.

c. Section 2.2.3 Operating Reactor Assessment Program

This section will be revised to add the implementation of the cROP and will reference the NRC's Inspection Manual Chapter (IMC) 2505. IMC 2505 describes the construction assessment program and is the overall cROP guidance and basis document. IMC 2505 serves the same purpose as IMCs 0308 and to some extent, IMC 2515.

Proposed revision:

2.2.3 Assessment Program Assessment of Violations Identified Under the ROP or cROP

The assessment, disposition, and subsequent NRC's action related to inspection findings identified at operating power reactors are determined by the ROP, as described in the NRC's Inspection Manual Chapter (IMC) 0305, ''Operating Reactor Assessment Program.'' The assessment, disposition, and subsequent NRC's action related to inspection findings identified at power reactors under the cROP are determined by the cROP, as described in IMC 2505, ''Periodic Assessment of Construction Inspection Program Results.''

Inspection findings identified through the ROP are assessed for safety significance using the SDP described in IMC 0609, ''Significance Determination Process.'' Inspection findings identified through the cROP are assessed for safety significance using the SDP described in IMC 2519, ''Construction Significance Determination Process.'' The SDPs use risk insights, where possible, to assist the NRC staff in determining the safety or security significance of inspection findings identified within the ROP or cROP. Inspection findings. . .

d. Section 2.2.4 Exceptions to Using Only the Operating Reactor Assessment Program

This section will be revised to add the implementation of the cROP and will reference IMC 2505.

Proposed revision:

2.2.4 Exceptions to Using an SDP for the Assessment of Violations Identified Under the ROP or the cROP

Some aspects of inspection findings and their associated violations at power reactors under the ROP or cROP cannot

be addressed only through the use of an applicable SDP. Reactor inspection findings are assigned significance and any associated violations involving traditional enforcement are assigned severity levels and can be considered for civil penalties (see IMC 0612, ''Power Reactor Inspection Reports,'' or IMC 0613, ''Power Reactor Construction Inspection Reports'') . . .

e. Section 2.2.6 Construction

Section 2.2.6, ''Construction,'' will be split into two sections: Section 2.2.6, ''Construction of a Production or Utilization Facility'' will address construction activities at reactor facilities. New Section 2.2.7, ''Construction of Processing and Fuel Fabrication, Conversion of Uranium Hexafluoride, or Uranium Enrichment Facilities,'' will be created to discuss construction at fuel processing and fabrication facilities. By creating the two sections, the NRC staff will be able to address specific enforcement policy issues unique to these facilities.

Proposed revision:

2.2.6 Construction of a Production or Utilization Facility

In accordance with 10 CFR 50.10, no person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit under 10 CFR part 50, a combined license (COL) under 10 CFR part 52, an early site permit authorizing the activities under 10 CFR 50.10(d), or a limited work authorization under 10 CFR 50.10(d). In an effort to preclude unnecessary regulatory burden on 10 CFR part 52 COL licensees, while maintaining safety, the Changes during Construction (CdC) Preliminary Amendment Request (PAR) process, is developed in Interim Staff Guidance (ISG)–025 ''Interim Staff Guidance on Changes during Construction under 10 CFR part 52.'' The licensing condition providing the option for a PAR as detailed in ISG–025 allows the licensee to request to make physical changes to the plant that are consistent with the scope of the associated license amendment request (LAR). The NRC staff may issue a No Objection Letter, with or without specific limitations, in response to the PAR. Enforcement actions will not be taken for construction pursuant to a PAR No Objection Letter that is outside of the current licensing basis (CLB) while the corresponding LAR is under review as long as the construction is consistent with the associated LAR and the No Objection Letter (the latter of which may contain limitations on construction activities). The PAR No Objection Letter authorization is strictly conditioned on the licensees' commitment to return the plant to its CLB if the requested LAR is subsequently denied or withdrawn. Failure to timely restore the CLB may be subject to separate enforcement, such as an order, a civil penalty, or both.

f. New Section 2.2.7

New Section 2.2.7, ''Construction of Processing and Fuel Fabrication, Conversion of Uranium Hexafluoride, or Uranium Enrichment Facilities,'' will be created to discuss construction at fuel processing and fabrication facilities. As a result, the NRC staff will be able to address specific enforcement policy issues unique to these facilities.

Proposed revision:

2.2.7 Construction of Processing and Fuel Fabrication, Conversion of Uranium Hexafluoride, or Uranium Enrichment Facilities

In accordance with 10 CFR 40.32(e) and 10 CFR 70.23(a)(7), commencement of construction, as defined in 10 CFR 40.4 and 70.4, before the NRC finishes its safety or environmental reviews and issues a license or license amendment for construction and operation of a facility where the proposed activity is uranium processing and/or fuel fabrication, scrap recovery, conversion or deconversion of uranium hexafluoride, or uranium enrichment; or for the possession and use of source and byproduct material for uranium milling or the production of uranium hexafluoride; or for the conduct of any other activity which the NRC determines will significantly affect the quality of the environment, is grounds for denial to possess and use licensed material in the plant or facility. Additionally, in accordance with 10 CFR 70.23(b), failure to obtain Commission approval for the construction of the principal structures, systems, and components of a plutonium processing and fuel fabrication plant prior to beginning such construction may also be grounds for denial of a license to possess and use special nuclear material. Construction activities are considered to be at the applicant's or licensee's own risk if the activities are performed prior to issuance of a license or license amendment, or in the case of a plutonium processing and fuel fabrication plant, prior to receipt of a construction authorization.

g. Section 2.3.1 Minor Violation

This revision will remove redundant language (IMC titles) from previously identified IMCs, and will add references to examples of minor violation issues found in IMCs 0613 and 0617.

Proposed revision: Violations of minor safety or security concern generally do not warrant enforcement action or documentation in inspection reports but must be corrected. Examples of minor violations can be found in the NRC Enforcement Manual and in IMC 0612 (Appendix E, ''Examples of Minor Issues''), IMC 0613 (Appendix E, ''Examples of Minor Construction Issues''), and IMC 0617, ''Vendor and Quality Assurance Implementation Inspection Reports (Appendix E, ''Examples of Minor Issues''). Guidance for documenting minor violations can be found in the NRC's Enforcement Manual; IMC 0610, ''Nuclear Material Safety and Safeguards Inspection Reports''; IMC 0612; IMC 0613; IMC 0616, ''Fuel Cycle Safety and Safeguards Inspection Reports''; and IMC 0617.

h. Section 2.3.2 Noncited Violation

This revision adopts the NRC's guidance on ''Plain Writing.'' It will also align with the aforementioned changes to this section of the Policy associated with crediting licensee corrective action programs whenever the NRC has inspected the CAP and found it to meet regulatory guidance, industry standards, or both.

Proposed revision:

2.3.2 Noncited Violation

If a licensee or nonlicensee has implemented a corrective action program that has been determined to be adequate by the NRC,[1] the NRC will normally disposition SL IV violations and violations associated with green ROP or cROP findings as noncited violations (NCVs) if all the criteria in Paragraph 2.3.2.a. are met.

For licensees and nonlicensees that have not received formal credit from the NRC for their corrective action programs, the NRC will normally disposition SL IV violations and violations associated with green ROP or cROP findings as NCVs if all of the criteria in Paragraph 2.3.2.b are met. If the SL IV violation or violation associated with green ROP or cROP finding was identified by the NRC, the NRC will normally issue a Notice of Violation.

Inspection reports or inspection records document NCVs and briefly describe the corrective action the licensee or nonlicensee has taken or plans to take, if known. Licensees and

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

nonlicensees are not required to provide written responses to NCVs; however, they may provide a written response if they disagree with the NRC's description of the NCV or dispute the validity of the NCV.

i. Section 6.5.c.4 and 5 SL III Violations Involve, for Example:

These examples (4 and 5) were modified to reference the appropriate regulation governing changes to a facility that references a certified design (i.e., 10 CFR 52.98). This regulation refers to applicable change processes in the applicable design certification rule, which are currently contained in 10 CFR part 52, appendix A–D.

Proposed revision:

4. A licensee fails to obtain prior Commission approval required by 10 CFR 50.59 or 10 CFR 52.98 for a change that results in a condition evaluated as having low-to-moderate or greater safety significance; or

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

j. Section 6.5.d.5 SL IV violations involve, for example:

Example 6.5.d.5 was moved to Section 6.9.d ''Inaccurate and Incomplete Information or Failure to Make a Required Report.''

Proposed revision: Delete example 6.5.d.5.

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

Section 50.55(e) requires holders of a construction permit or combined license (until the Commission makes the finding under 10 CFR 52.103(g)) to adopt procedures to evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable. This section is similar to the reporting requirements of 10 CFR part 21. Therefore, a reference to this regulation was added to the examples provided in Section 6.9. In addition, Section 6.9.d, Item 12, was changed to note that 10 CFR 21.21(a) applies to vendors as well as licensees.

Proposed revision:

a. SL I violations involve, for example:

5. A deliberate failure to notify the Commission as required by 10 CFR part 21, ''Reporting of Defects and Noncompliance,'' or 10 CFR 50.55(e) occurs.

c. SL III violations involve, for example:

5. A failure to provide the notice required by 10 CFR part 21 or 10 CFR 50.55(e), for example:

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

(b) A withholding of information or a failure to make a required interim report by 10 CFR 21.21, ''Notification of Failure to Comply or Existence of a Defect and Its Evaluation,'' or 10 CFR 50.55(e) occurs with careless disregard.

d. SL IV violations involve, for example:

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

13. Failure to implement adequate 10 CFR Part 21 or 10 CFR 50.55(e) processes or procedures that have more than minor safety or security significance.

14. A materials licensee fails to . . .

3. Glossary Revisions

a. During an audit of the NRC's use of Confirmatory Action Letters (CAL), it was identified that some agency procedures did not consistently describe all CAL recipients. To date, all affected procedures have been revised to incorporate a consistent definition with the exception of the Policy. This Policy revision will incorporate the term Confirmatory Action Letter.

Proposed revision: Confirmatory Action Letter (CAL) is a letter confirming a licensee's or contractor's voluntary agreement to take certain actions to remove significant concerns regarding health and safety, safeguards, or the environment. It is issued to licensees or, if appropriate, to non-licensees subject to the NRC's jurisdiction.

b. The description of Enforcement Guidance Memoranda was moved from Section 2.3.9 and placed into the Glossary Section, no actual change in policy.

c. The term interim Enforcement Policy was added to the Glossary.

Proposed revision: Interim Enforcement Policies (IEPs) are developed by the NRC staff and approved by the Commission for specific topics, typically for a finite period of time. Generally, IEPs grant the staff permission to refrain from taking enforcement action for generic issues which are not currently addressed in the Policy and are typically effective until such time that guidance is developed and implemented. IEPs can be found in Section 9.0 of the Policy.

4. Civil Penalty for Reciprocity (Section 2.3.4)

Recent cases involving the willful failure to file for reciprocity (including one case that was particularly egregious) have led to discussions regarding the agency's ability to deter future noncompliance in this area and lessen the economic benefit. Since reciprocity involves obtaining an NRC general license, the willful failure to obtain an NRC specific license will also be addressed by this effort aimed at deterring noncompliance and reducing the resultant economic gain.

Although the Policy (Section 3.6, ''Use of Discretion in Determining the Amount of a Civil Penalty) allows the staff to exercise discretion to propose or escalate a civil penalty for cases involving willfulness, the staff will add clarifying language to Section 2.3.4, ''Civil Penalty,'' near the discussion on civil penalties for violations associated with loss of regulated material (i.e., the NRC's lost source policy). To aid in implementation and ensure consistency, the Enforcement Manual will include specific guidance regarding the typical or ''starting,'' civil penalty amount (e.g., 2 times the base civil penalty).

Proposed Addition in 2.3.4 after the paragraph starting: ''The NRC considers civil penalties for violations . . .''

For cases involving the willful failure to file for reciprocity or obtain an NRC specific license, the NRC will normally consider a civil penalty to deter noncompliance for economic benefit. Therefore, notwithstanding the normal civil penalty assessment process, in cases where there is any indication that the violation was committed for economic gain, the NRC may exercise discretion and impose a civil penalty. The resulting civil penalty will normally be no more than 3 times the base civil penalty; however, the agency may mitigate or escalate the amount based on the merits of a specific case.

5. New Section 3.10 ''Operating Reactor Violations With No Performance Deficiencies''

Section 2.2.4.d has been deleted and the information has been moved to new Section 3.10, ''Operating Reactor Violations With No Performance Deficiencies.'' Since the information contained in Section 2.2.4.d describes enforcement discretion, it would be more appropriate to be listed in Section 3.0 ''USE OF ENFORCEMENT DISCRETION.'' The NRC views this as

a clarification that involves no actual change in policy.

Proposed revision:

3.10 Operating Reactor Violations with No Performance Deficiencies

The NRC may exercise discretion for operating reactor licensees with violations of NRC requirements for which there are no associated SDP performance deficiencies (e.g., a violation of TS which is not a performance deficiency).

6. Traditional Enforcement Civil Penalty Assessment for Power Reactors

A conflict between the Enforcement Policy (the Policy) and the Enforcement Manual (Manual) has been identified with respect to how the NRC determines the appropriateness and amount of civil penalties (CP) for power reactor violations subject to the traditional enforcement process. While the Policy is the controlling document, certain staff members believe the Manual is correct and that the Policy was not revised as intended during the major revision(s) to support the reactor oversight process (ROP). SECY–99–007 ''Recommendations for Reactor Oversight Process Improvements'' contains some preliminary discussion of the effect of the ROP on traditional enforcement and provides some insight as to this original intent. Other staff members maintain that the Policy is appropriate and should continue to be followed.

For non-willful, SL III violations, the traditional enforcement CP assessment process in the Policy includes a 2-year ''look back'' at a licensee's enforcement history as a means of evaluating licensee performance. From this review, for licensees with good performance, the staff may bypass the question of whether the licensee or the NRC identified the issue, which can increase a licensee's chance of not receiving a civil penalty, so long as the staff concludes the licensee implemented timely and effective corrective action. The specific language questions whether the licensee had ''any previous escalated enforcement action (regardless of the activity area) within the past 2 years . . .'' [2] and defines Escalated Enforcement Action to include ''NOVs associated with an inspection finding that the SDP [significance determination process] evaluates as having a low to moderate (white) or greater safety significance . . .''.[3]

During the development of the ROP, circa 2000, both the Policy and the Manual were revised to support the new assessment process. Within a year of the Policy revision incorporating the ROP, the Manual was changed to specifically exclude ROP significance determination process (SDP) findings from the ''look back'' consideration, effectively causing the staff to not consider recent licensee ROP performance when considering whether a CP is appropriate for a power reactor traditional enforcement violation and thus ''automatically'' bypassing the question of identification credit for power reactor licensees in certain scenarios. This notice seeks to determine whether past ROP performance should, in fact, be considered as part of a power reactor licensee's enforcement history, and whether the question of identification credit should be asked, recognizing that if a licensee did identify the current violation, a civil penalty may still not be assessed (assuming corrective action credit).

A review of the Policy revision history as well as the Manual changes revealed that the inconsistency dates back to the year 2000 timeframe. In researching the history, the staff noted that the traditional Policy underwent substantial revision, specifically including the CP assessment process, just prior to the development of the ROP pilot. At the time, it was standard practice to revise the Policy and then solicit public comments for consideration in a subsequent revision. Consequently, there is a certain overlap in Policy revisions and a resultant lack of clarity.

The issue is very narrow, impacting only traditional enforcement cases involving a non-willful, SL III violation (practically speaking, the violation would be a violation involving ''impeding the regulatory process,'' such as violations of 10 CFR 50.59 or 50.9, or violations involving a failure to make a required report) for a licensee that has, within the last 2 years, received one or more violation(s) associated with a White, Yellow, or Red SDP finding. If all of these conditions were met, the process would then look at whether identification credit was warranted. If identification credit was warranted (i.e., the licensee identified the issue giving rise to the current violation), the licensee's previous history would not impact the issuance or amount of a proposed CP.

In the late 1990's the Policy was revised numerous times, starting with a complete revision in 1995 to incorporate the recommendations of an agency level review team and, shortly thereafter, to support the newly-developed ROP. In addition, at least one substantive change was made to the basis of assessing violation significance which, while related to the ROP, was broader than power reactors only and not directly associated with the ROP revisions. Due to the large number of substantive changes being made to the Policy during this period, it is not surprising that there is little mention in the related Commission papers of this specific issue. The staff identified only one public comment (from the Nuclear Energy Institute (NEI)) on the subject, and it was not directly associated with the ROP. Rather, NEI's comment reflected a concern that the use of any escalated enforcement action was too broad of a sweep and that ''despite the industry's sustained excellent safety performance, even the NRC recognizes that licensees may receive an occasional violation in a 2-year period. . . . The Enforcement Policy should be clarified to state that the criterion is met *unless the previous violation is in the same functional area as the current violation.''* [4] NEI's comment, although not directly in response to the 1995 revision, was actually focused on that change, not the ROP revisions also in progress at the time. No documentation was found that addressed NEI's comment, other than a commitment that the staff made to consider it in the next Policy revision (at which point the language was not modified, nor was NEI's comment specifically addressed).

The staff reviewed case history to gain perspective on the scope of the issue. During the 14 years since the inception of the ROP, only ten cases were in the scope of this issue (traditional enforcement SL III, non-willful cases with an SDP finding of greater-than-green within the previous 2 years of the case being assessed). Of the ten, in three instances, a prior SDP finding was considered (consistent with the Policy), although no CP was issued due to identification credit, or, in one case, other factors warranting enforcement discretion. Of the remaining seven cases, only three appeared to warrant a CP based on the licensee's performance and failure to identify the violation being considered; however, apparently due to following the Manual guidance specifically excluding SDP findings, no CP was actually issued. It is not certain that a CP should have been issued in each of those three cases due to lack of documentation on all aspects that may impact a CP. In other words, while it might appear a CP should have been issued, it's not a certainty. In addition, when the staff identified the issue,

[2] Enforcement Policy, January 28, 2013, § 2.3.4(a).

[3] Id. at § 7.0 Glossary, although previous Policy revisions included nearly the same definition in a footnote to the CP assessment process.

[4] SECY–00–0049 (ADAMS Accession No. ML003683227).

despite relatively few examples through the years, three additional cases were identified as meeting the criteria to consider identification credit; however, recognizing the inconsistent implementation of the Policy, the staff used discretion to not consider identification credit.

The NRC is soliciting comments on the options presented below. The NRC requests that in your submissions, you specify which option you believe to be appropriate and provide any comments that you may have on this topic.

Options:

A. Make no changes to the Policy and revise the Manual to be consistent with the Policy. This option encourages identification of issues by licensees consistent with the Policy goals by considering identification credit, and recognizes good performance when there are no escalated violations within the past 2 years. This approach assumes that the default methodology is to consider who identified the current violation when evaluating that violation for a possible CP. A licensee is not ''penalized'' by having a violation within the past 2 years; rather they are given a special dispensation when they have not received such a violation. When a licensee has had an escalated violation in the previous two years, the question regarding identification is considered (meaning if a licensee has a previous escalated violation it does not automatically result in a CP or an increase in CP). Because traditional enforcement actions are not inputs to the action matrix, there is no impact on the ROP, only the *possible* amount of a CP for the instant traditional enforcement case.

B. Revise the Policy to eliminate consideration of previous (within the last 2 years) escalated ROP violations during the CP assessment process for a non-willful SL III violation. This could be accomplished by inserting the phrase ''(except violations associated with ROP findings)'' at Section 2.3.4.a, changing the first sentence to ''Did the licensee have any previous escalated enforcement action (regardless of the activity area) (except violations associated with ROP findings), within the past 2 years.''

The Agency's ROP and the Agency Action Matrix process provide an increasing level of Agency oversight (inspection, assessment, senior Agency management review) based on licensee performance. The ROP has a foundation in the corrective action program which is consistent with one of the goals of the Enforcement Policy; namely the identification and corrective actions. The action matrix carries forward and the impact of previous SDP findings continues for a period of time in the action matrix. Therefore, a policy decision could be made that the SDP findings would not be considered in the assessment of a licensee's performance for the purpose of civil penalty determination. This option would provide the maximum separation between the ROP and traditional enforcement.

C. Revise the Policy to consider escalated ROP violations in the same functional area. This could be accomplished by inserting the phrase ''(for escalated ROP findings, only consider violations in the same strategic performance (i.e., reactor safety, radiation safety, and safeguards) area).''

This option would be consistent with the NEI comment from 1999. If the functional areas selected were at a high level, an argument could be made that for a power reactor, a type of licensee with a large amount of operation within NRC's jurisdiction, performance in one functional area is not necessarily reflective of all of the functional areas. However, contrary to the concern raised by NEI, power reactor licensees are not routinely in the situation where escalated enforcement of this certain type is being considered and a previous escalated SDP finding within the past 2 years exists. As noted in the data above, the total number of scenarios identified by the staff was less than one per year on average (and about half of those cases would not have received a CP due to the licensee receiving identification credit). The option would also create a difference between licensee types within the Policy. All other licensee types would still be subject to consideration of all activity areas.

D. Revise the Policy to eliminate all consideration of prior performance for all licensees. This option would eliminate the 2-year look back altogether and all traditional enforcement non-willful escalated cases would consider who identified the violation as the first step in the CP assessment process. This option also eliminates the recognition that one escalated violation in the previous 2 years or 2 inspections does not necessarily indicate poor performance, a concept that was originally recognized in NUREG–1525. In considering identification credit for every violation, licensees without any performance history but who did not identify the violations would receive a CP whereas under the current Policy, they would not.

7. Revision to Section 6.13 ''Information Security''

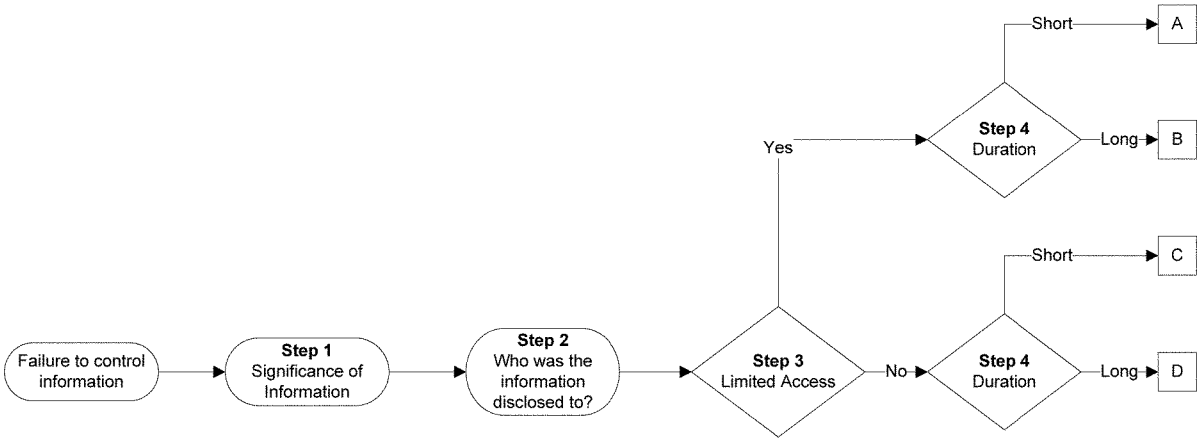
The NRC is proposing to revise Section 6.13 of the Policy, ''Information Security.'' This revision will replace the current examples, which are based on the classification levels of the information, with a risk-informed approach for assessing the significance of information security violations. This approach of evaluating the significance of information security violations by using a risk-informed process is based on the actual and/or potential significance of the information security violation and will more accurately reflect the severity of these types of violations and improve regulatory consistency.

This proposed process is the result of lessons learned from a number of violations that the NRC has processed over the last few years based on varying significance levels. This process will utilize a flow chart and table approach, along with defined terms.

Once a noncompliance is identified, a four step approach will be applied to determine the significance level. The four steps are: (1) Determine the significance of the information (i.e., High, Moderate, or Low), (2) determine the extent of disclosure (i.e., individual deemed trustworthy and reliable, unknown disclosure, or confirmed to an unauthorized individual), (3) determine the accessibility of the information (i.e., how limited was access to the information), and (4) determine the duration of the non-compliance (i.e., how long was the information available).

Once all steps are completed, the user will obtain a recommended severity level for the violation. The NRC recognizes this approach as a change from the traditional violation examples; however, the new process will be risk-informed and will consider the significance of the information as it relates to public health and safety or the common defense and security regardless of the classification level.

Proposed revision:



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

Significance

High Significance: The totality of information that could reasonably cause an adverse impact on national security and provide a significant amount of information about a technology (i.e. key elements of a technology or system) or combinations of the following elements related to protective strategies: Response Strategy, Target Sets, Physical Security Plan, Contingency Plan or Integrated Response Plan. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data) or Safeguards.

Moderate Significance: The totality of information provides limited information within its classification that may be useful for an adversary about technology information or physical security plan of a facility. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data), Safeguards or information requiring protection pursuant to 10 CFR part 37.

Low Significance: The totality of information was not particularly sensitive within its classification in that, taken by itself, the information would not aid an adversary in gaining information about a technology or physical security plan of a facility. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data), Safeguards, information requiring protection pursuant to 10 CFR part 37.

Disclosure

Trustworthy and reliable: An individual considered dependable in judgment, character, and performance, such that disclosure of Information to that individual does not constitute an unreasonable risk to the public health and safety or common defense and security.

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

Confirmed: Instances where a person who does not have authorization to access controlled information gains access to the information.

Electronic Media/Confirmed: For electronic media it is considered confirmed once the information is no longer on an approved network for that type of information.

Unauthorized Individual: A person who does not possess a trustworthiness and reliability determination and a need-to-know.

Limited Access

Hard Copy Format: The licensee has the ability to restrict access to the area where the information is stored and has some type of control system in place on who accesses the area.

Electronic Media: The information is stored in a location that is still within the licensee's computer network's firewall and the licensee has some type of control system in place on who can access the information.

Duration

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

Short: Less than 14 days from the date of infraction to discovery of the non-compliance.

IV. Procedural Requirements

Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements 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 (OMB), approval number 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Dated at Rockville, Maryland, this 30th day of September 2014.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Office of Enforcement.

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