

From: Charles R. Ogle, *CEO*  
To: Doug Coe  
Date: Tue, Jan 28, 2003 11:00 AM  
Subject: Fwd: Re: DRAFT INSPECTION PROCEDURE ON MANUAL ACTIONS

Thank you for your quick response. Regarding point 2, I understand better now where you are heading and will comply with this direction.

However, I guess I am still of the opinion that we are going to put the licensees in a difficult position if they are issued an NCV for a requirement that they are being told will be changed in the near future. If I was a licensee, and expended money preparing a deviation/exemption for a NCV only to be told that it was no longer required, I would be upset. I think we would be in a better position if we issued URIs for manual actions that we think will work. We could close the URIs once the rulemaking/enforcement guidance is promulgated.

However, as I said above, I will go with your direction. Thanks.

>>> Doug Coe 01/28/03 10:42AM >>>

Chuck,

Thanks for the feedback.

1. My only point was that the guidance is still draft and as such should not be used for discussions with the licensee. The draft guidance, when approved, is intended to provide a measure of consistency. The date in the draft guidance is also draft and probably reflected an over-optimistic review/comment process.
2. The draft memo is intended to simply reflect current ROP guidance. URIs are opened if you need further info to conclude that a finding exists. If you conclude that a finding exists with respect to III.G.2, then manual actions are at best only an interim compensatory measure. The significance of the finding should consider these measures. The licensee must either restore compliance with the requirement or prepare and submit a relief request. However, the industry has been informed of the staff's intent to pursue rulemaking and within a few months we may have an approved rulemaking plan and associated enforcement discretion. It is likely that while the licensee is preparing a relief request (i.e., permanent corrective action) for a very low significance NCV, the staff may arrive at enforcement discretion prior to the licensee submission of the relief request and obviate the need for the request until the rule is changed (at which time the licensee must re-assess whether or not they meet the rule as approved).

I'd like the memo to reflect existing policy and procedure as factually as possible and had forwarded it for comment. If you could propose better language, please forward back to me.

Thanks again,  
Doug

>>> Charles R. Ogle 01/28/03 10:11AM >>>

Doug, I know that Chuck Casto already provided a response to your e-mail, but I'd like to add my two cents worth.

1. I am concerned that the note to the DRS division directors and deputies contains ambiguous guidance regarding the purpose of the draft inspection guidance. I think that the difference between the two statements in the memo:

*...is not yet officially approved guidance and should not be used as the basis for discussions with licensees.*

and

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*...the draft inspection guidance is intended to encourage consistency in inspector judgement as to whether such manual actions are a reasonable interim compensatory measure*

is subtle at best. Inspector judgement in this case will be the result of inspection of the manual actions. The inspectors will reasonably use the guidance presented to form that judgement and will need to be able to discuss their decision making process to licensees. Further, I think most inspectors and supervisors would have difficulty explaining the practical difference in terms of conducting inspections in these two statements. From a larger sense, I think that if inspectors are going to be asked to inspect an attribute of a licensee's program, then the criteria should be clear and available for the public and the licensee to review. I don't think that these two statements in the memo fit that bill. Also as an additional source of confusion, the draft inspection procedure contains guidance to use the guidance for all inspections conducted after November 2002.

2. I am also confused by the logic in the memo to the DRS division directors to be issued by John Hannon and Cynthia Carpenter. If I am reading the logic presented in the memo correctly, the licensee would be issued a URI based on whether or not the licensee claimed that the manual actions were part of their CLB and not on whether or not the manual actions would work. Per my read of the memo, it looks like whether or not the manual actions work only factors into the severity of the violation.

I thought that the staff was going to propose rulemaking to permit manual actions and in the interim was going to pursue a policy that minimized inspection and licensing action on manual actions that the inspections judged would work or were reasonable. If we start issuing NCVs on manual actions that work, some licensees may feel obliged to pursue licensing actions (exemptions/deviations) to restore compliance.

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