

### 3.5 Confirmatory Action Letter (CAL)

- A. **Confirmatory Action Letters** (CALs) are letters issued to licensees or, if appropriate, to non-licensees subject to the Nuclear Regulatory Commission's (NRC) jurisdiction<sup>1</sup> to emphasize and confirm an agreement to take certain actions in response to specific issues. CALs are flexible and valuable tools available to the staff to resolve licensee issues in a timely and efficient manner, e.g., when an order may be warranted to address a specific issue, a CAL is a suitable instrument to confirm initial, agreed upon, short-term actions covering the interval period prior to the actual issuance of the order.

**NOTE:**

Although this section refers to recipients as licensees, it is implied to mean either a licensed recipient or a non-licensed recipient subject to the NRC's jurisdiction.

- B. The NRC expects licensees to adhere to any obligations and commitments addressed in a CAL.
- C. CALs should only be issued when there is a sound technical and/or regulatory basis for the desired actions discussed in the CAL.
1. CALs must meet the threshold defined in the Enforcement Policy, i.e., "to remove significant concerns about health and safety, safeguards, or the environment."
    - a). The level of significance of the issues addressed in a CAL should be such that if a licensee did not agree to meet the commitments in the CAL, the staff would likely proceed to issue an order.
  2. CALs may be used to confirm that a licensee will adhere to existing provisions.
  3. Generally, CALs are not issued to individuals.
    - a). CALs shall not be used to remove an individual from, or restrict his or her ability to perform, licensed activities. Such action requires an order, not only to ensure enforceability, but because individual rights are affected and the opportunity for a hearing, which is afforded by an order but not a CAL, must be given to the affected individual and any other person adversely affected by the action.
- D. Even though a CAL by definition confirms an agreement by a licensee to take some described action, it may, at times, require some negotiation prior to issuance.

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<sup>1</sup> Non-licensees subject to the NRC's jurisdiction may include, for example, vendors; contractors and subcontractors of licensees; or unlicensed individuals who are employees of licensees, contractors, or subcontractors.

1. The licensee must agree to take the action.
  2. Once a CAL is agreed upon, the licensee is expected to take the documented actions and meet the conditions of the CAL.
- E. A CAL may be issued when a materials licensee is violating a particular license condition, but the license condition prescribes neither the action nor the timeliness for restoring compliance as would be prescribed by a reactor licensee's technical specification action statement.
1. A CAL would be useful in this type of situation to confirm compensatory actions which, if implemented, would ensure safety such that an immediate suspension of licensed activities might not be necessary.
  2. The use of a CAL in this situation is generally reserved for materials licensees.
  3. A NOED would be the appropriate tool for reactor licensees and gaseous diffusion plants if the issue is addressed by a license or certificate condition.
- F. CALs may be issued to confirm the following types of actions (note that this is not an exhaustive list):
- In-house or independent comprehensive program audit of licensed activities
  - Correction of training deficiencies, e.g., radiological safety, etc.
  - Procedural improvements
  - Equipment maintenance
  - Equipment operation and safety verification
  - Voluntary, temporary suspension of licensed activities
  - Licensee's agreement to NRC approval prior to resumption of licensed activities
  - Root cause failure analyses
  - Improved control and security of licensed material
- G. On occasion, licensees elect to submit letters to the NRC addressing actions that they intend to take in reaction to safety issues.
1. Depending on the significance of the issues involved, the staff may elect to issue a brief CAL accepting the licensee's letter and commitments; however, this practice should not be routine.
  2. CALs should be limited to those cases where the issues involved clearly meet the threshold for issuing a CAL discussed above.
- H. Orders should be issued instead of CALs in the following situations:

1. When it is apparent that the licensee will not agree to take certain actions that the staff believes are necessary to protect public health and safety and the common defense and security;
2. When there is an integrity issue;
3. When there is some likelihood that a licensee may not comply with a CAL commitment; or
4. When the staff has concluded that the CAL will not achieve the desired outcome.

**NOTE:**

The issuance of an order, in lieu of a CAL, should be considered whenever there is a need to ensure that a legally binding requirement is in place. Orders must be coordinated between the regional office, the appropriate program office, OGC, and OE.

### **3.5.1 Noncompliance with CALs**

- A. CALS do not establish legally binding commitments with the exception of the reporting provisions contained in Section 182 of the Atomic Energy Act, as amended (AEA) and its implementing regulations which require a licensee to notify the NRC when:
  1. The licensee's understanding of its commitments differs from what is stated in a CAL;
  2. The licensee cannot meet the corrective actions schedule; and
  3. The licensee's corrective actions are completed.
- B. Failure to provide the reports required by Section 182 of the AEA may be treated like any other violation of a legally binding requirement.
- C. Failure to meet a commitment in a CAL can be addressed through;
  1. A Notice of Deviation;
  2. An order where the commitments in a CAL would be made NRC requirements; and
  3. A Demand For Information (DFI) where the licensee's performance, as demonstrated by the failure to meet CAL commitments, does not provide reasonable assurance that the NRC can rely on the licensee to meet the NRC's requirements and protect public health and safety or the common defense and security.

- D. Issuance of a CAL does not preclude the NRC from taking enforcement action for violations of regulatory requirements that may have prompted the issuance of the CAL. Such enforcement action is intended to:
  - 1. Emphasize safe operation in compliance with regulatory requirements; and
  - 2. Clarify that the CAL process is not a routine substitute for compliance.
- E. The NRC would not normally take additional enforcement action for those violations that continue after a CAL has been issued where compensatory actions have been accepted by the NRC and taken by the licensee in accordance with its commitments.

### **3.5.2 CAL Responsibilities**

- A. The Office of Enforcement is the agency's centralized control point for oversight and implementation of an effective CAL process. As such, OE is responsible for:
  - 1. Developing agencywide CAL related guidance;
  - 2. Maintaining a system for tracking the issuance and status of CALs; and
  - 3. Ensuring CAL audits are conducted periodically to verify compliance with CAL policies and procedures.
- B. The Regional/Program Office Enforcement Coordinators from the Region/Program Office that is issuing the CAL will be responsible for:
  - 1. Ensuring that CALs generally meet this guidance;
  - 2. Assigning an EA number to the CAL. If the Regional/Program Office Enforcement Coordinators are unavailable, contact OE for an EA number. This should be completed just prior to CAL issuance to prevent multiple numbers assigned to one CAL; and
  - 3. Updating EATS with the status of the CAL, i.e. issued date and ADAMS ML number, closure letter date and ADAMS ML number, and closure of the case in EATS.

### **3.5.3 CAL Tracking**

- A. EATS will be utilized as the agencywide CAL tracking system.
  - 1. The EA number will serve as the CAL tracking number.

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### 3.5.4 Preparing a CAL

- A. CALs should be prepared using the appropriate form in Appendix B and should include the following elements:
1. A brief discussion of the specific issues with which the NRC has concern, including how and when they were identified.
  2. A brief statement summarizing NRC/licensee communication on the agreed-upon actions.
    - a). The statement should include when the communication took place, the names and positions of the principal individuals involved in the communication, and whether the communication took place in a telephone conversation or a face-to-face meeting.
    - b). Face-to-face meetings should also include the location of the meeting (i.e., regional office, licensee's facility).
  3. A clear description of the agreed-upon actions and where warranted and appropriate, the date(s) when actions will be completed.
  4. A statement that requires the licensee to provide written notification to the NRC if its understanding of the relevant issues and commitments differ from what is stated in the CAL.
  5. A statement that requires the licensee to provide written notification to the NRC if for any reason it cannot complete the actions within the specified schedule. It should also require that the licensee inform the NRC of the modified schedule.
  6. A statement that requires the licensee to provide written notification to the NRC if it intends to change, deviate from, or not complete any of the documented commitments, prior to the change or deviation.
  7. A statement that requires the licensee to provide the NRC with written confirmation of completed actions.
  8. A statement that issuance of the CAL does not preclude issuance of an order formalizing the commitments in the CAL or requiring other actions nor does it preclude the NRC from taking enforcement action for violations of NRC requirements that may have prompted the issuance of the CAL.
  9. A statement that failure to meet the commitments in a CAL may result in an order if the licensee's performance, as demonstrated by the failure to meet CAL commitments, does not provide reasonable assurance that the NRC can rely on the licensee to meet the NRC's requirements and protect public health and safety or the common defense and security.

10. A statement that the letter and any licensee response will be made available to the Public.
11. Citation of the regulation implementing Section 182 of the AEA and authorizing the required responses to the CAL by the licensee.

### **3.5.5 CAL Coordination and Review**

A. CALs should be coordinated and reviewed according to the following guidelines:

1. CALs issued by the region must be coordinated with the appropriate program office prior to issuance.
  - a). Unless FSME requests, CALs issued to materials licensees do not require FSME concurrence.
  - b). Unless NMSS requests, CALs issued to fuel facilities under construction do not require NMSS concurrence.
  - c). CALs issued to operating reactor licensees must be concurred on by the Director, NRR or their designee.
  - d). Because NSIR is responsible for coordinating security assessment activities across the spectrum of NRC licensees, CALs issued to NRC licensees which include security-related provisions, must be concurred on by the Director, NSIR.
  - e). CALs issued to 10 CFR Parts 50 and 52 reactor construction sites must be concurred on by the Director, NRO or their designee.
2. Regional Enforcement Coordinators shall be consulted before the region issues a CAL.
3. Applicable Program Office Enforcement Coordinators shall be consulted before the program office issues a CAL.
4. CALs issued by NRR, NMSS, FSME, NRO or NSIR, must be coordinated with the appropriate region. This coordination will help to provide consistency between the regions and program offices in response to similar issues and provide program oversight and assistance.
5. Unless OE requests, CALs do not need to be coordinated with or concurred in by OE.

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### **3.5.6 CAL Signature Authority**

CALs should be signed and issued according to the following guidelines:

- A. The Regional Administrator should sign all CALs issued by the region. Delegation of signature authority should not be below the Division Director or acting Division Director.
- B. The Director, NRR, the Director, NMSS, the Director, FSME, the Director, NRO, or the Director, NSIR, should sign all CALs issued by NRR, NMSS, FSME, NRO or NSIR, respectively. Delegation of signature authority should not be below the Division Director or acting Division Director.

### **3.5.7 Licensee Notification, Mailing, and Distribution for CALs**

- A. CAL distribution:
  - 1. CALs should be sent to the licensee by either Certified Mail (Return Receipt Requested) or Express Mail.
  - 2. Upon issuance, CALs should be distributed to:
    - OE at RidsOeMailCenter
    - The appropriate Deputy EDO
    - The appropriate program office (i.e., NRR, NMSS, FSME, NRO or NSIR)
    - The appropriate region
    - The appropriate Regional Public Affairs Officer
    - The Regional State Liaison Officer
    - The State
    - For material licensees, a copy should be sent to the Regional State Agreements Officer
  - 3. CALs should, where possible, be made available to the Public.
- B. The staff should be sensitive to describing agreed upon licensee corrective actions that involve safeguards matters to prevent inadvertent release of safeguards information.

### **3.5.8 Closing Out CALs**

- A. A CAL may or may not require follow-up inspection to verify completion of the specified licensee actions. Whether the staff believes that an inspection is necessary to close a CAL will be determined on a case-by-case basis and will depend on the circumstances of the case.
- B. The issuing office (i.e., region, NRR, NMSS, FSME, NRO or NSIR) will issue documentation formally closing out the CAL.

- C. Correspondence closing out a CAL should be sent to the same person/address as the CAL; however, verbal notification, in advance of written correspondence, may be sufficient to permit plant restart or resumption of affected licensee activities.

### **3.5.9 Press Releases for CALs**

Press releases are not routinely issued to address the issuance of a CAL. If a region believes that a press release is appropriate, it should be coordinated with Public Affairs which will make that determination.