

ORIGINAL

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 AFFIRMATION/DISCUSSION AND VOTE

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6 PUBLIC MEETING

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8
9 Nuclear Regulatory Commission
10 One White Flint North
Rockville, Maryland

11 Friday, September 16, 1988
12

13 The Commission met in open session, pursuant to
14 notice, at 11:55 a.m., the Honorable LANDO W. ZECH, Chairman
15 of the Commission, presiding.

16
17 COMMISSIONERS PRESENT:

18 LANDO W. ZECH, Chairman of the Commission
19 THOMAS M. ROBERTS, Member of the Commission
20 KENNETH M. CARR, Member of the Commission
21 KENNETH C. ROGERS, Member of the Commission
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1 STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:
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3 A. BATES
4 W. PARLER
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P R O C E E D I N G S

(11:55 a.m.)

CHAIRMAN ZECH: Good morning, ladies and gentlemen. This is an affirmation session. Before I ask the Secretary to walk us through the item we have before us this morning, do any of my fellow Commissioners have any comments to make?

(No response.)

CHAIRMAN ZECH: Mr. Bates, you may proceed.

MR. BATES: Mr. Chairman, we have one item to add this morning to the affirmation session. It is SECY-88-226. We need to have you vote on it to hold that on less than one weeks notice.

CHAIRMAN ZECH: Excuse me. Is it 226 or 246? That has been confused here a little bit. I thought it was 246.

COMMISSIONER ROBERTS: 246 was already on there.

CHAIRMAN ZECH: Oh, it's already on.

MR. BATES: We are adding 226 on short notice.

CHAIRMAN ZECH: All right.

MR. BATES: We need to ask you to vote to hold that on less than one weeks notice.

CHAIRMAN ZECH: Aye.

COMMISSIONER ROBERTS: Aye.

COMMISSIONER CARR: Aye.

COMMISSIONER ROGERS: Aye.

MR. BATES: Mr. Chairman, 88-226, the revision to

1 the general statement of policy and procedures for enforcement
2 actions, 10 CFR, Part 2, Appendix C; the Commission is being
3 asked to approve final revisions to Appendix C which would
4 revise the Commission's enforcement policy to, among other
5 considerations, provide added incentives for licensees to
6 identify, report, and correct significant violations.

7 All Commissioners have approved the policy changes
8 with modifications proposed by the Chairman and
9 Commissioner Carr.

10 Would you please affirm your votes?

11 CHAIRMAN ZECH: Aye.

12 COMMISSIONER ROGERS: Aye.

13 COMMISSIONER ROBERTS: Aye.

14 COMMISSIONER CARR: Aye.

15 MR. BATES: The second item, Mr. Chairman, is
16 88-246, the final rule on emergency planning and
17 preparedness requirements for nuclear power plant fuel
18 loading and initial low power testing.

19 The Commission is being asked to approve final
20 changes to 10 CFR 50.47, paragraph (d) of the Commission's
21 Rules. The changes are intended to reconcile discrepancies
22 between the language of the statement of considerations and
23 the language of the Commission's 1982 emergency planning
24 rule, by making clear that systems for notification of the
25 public off site are not required prior to the issuance of a

1 license for fuel loading and low power testing.

2 All Commissioners have approved the rule changes
3 with editorial comments provided by Commissioner Carr.

4 Would you affirm your vote?

5 CHAIRMAN ZECH: Before we vote on that, let me just
6 make a comment. The rule that we are voting on today is
7 designed to remove an inconsistency in the NRC's emergency
8 planning rules. As issued in 1982, those rules provided that
9 for low power testing of nuclear power plants only on site
10 emergency planning would be needed.

11 Nevertheless, the statement of consideration
12 accompanying the rule states that before authorizing low
13 power testing, the NRC would review systems such as sirens
14 for prompt notification of the public off site.

15 That rule that we are voting on today would remove
16 that inconsistency and make clear, as the 1982 rule intended,
17 that only on site emergency planning is needed for fuel
18 loading and low power testing.

19 I might add that although the problem we are
20 addressing today came to light in the context of the Seabrook
21 licensing proceeding, we are not deciding today whether that
22 plant should receive a low power license. What we are doing
23 today is simply assuring that our rules are internally
24 consistent.

25 MR. BATES: Mr. Chairman, yourself and the other

1 Commissioners have indicated that you will approve the rule
2 changes. Would you please affirm your vote?

3 CHAIRMAN ZECH: Aye.

4 COMMISSIONER ROBERTS: Aye.

5 COMMISSIONER CARR: Aye.

6 COMMISSIONER ROGERS: Aye.

7 CHAIRMAN ZECH: Is there anything else to come
8 before us?

9 MR. BATES: Mr. Chairman, we had one third item
10 that we had listed tentatively on the schedule in the matter
11 of ALAB-895 on Seabrook on financial qualifications. On
12 this matter, the Commission has not yet completed its
13 deliberations. We will have to postpone that item.

14 CHAIRMAN ZECH: We will not vote on that financial
15 qualifications issue today. All right. Anything else to
16 come before us this morning?

17 (No response.)

18 CHAIRMAN ZECH: If not, thank you very much. We
19 stand adjourned.

20 (Whereupon, at 12:01 o'clock, p.m., the Commission
21 meeting was adjourned.)

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DATE OF MEETING: September 16, 1988

were transcribed by me. I further certify that said
transcription is accurate and complete, to the best
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JOHN TROWBRIDGE, CVR

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RULEMAKING ISSUE

(Affirmation)

SECY-88-226

August 3, 1988

For: The Commissioners

From: Victor Stello, Jr.
Executive Director for Operations

Subject: REVISION TO THE GENERAL STATEMENT OF POLICY AND PROCEDURES
FOR ENFORCEMENT ACTIONS (10 CFR PART 2, APPENDIX C)

Purpose: To obtain Commission approval for publication of a revised
General Statement of Policy and Procedure for Enforcement
Actions

Discussion: As a result of further experience with applying the NRC
Enforcement Policy, the staff is recommending that the
policy be revised in a number of areas. The most
significant changes are intended to (1) place greater
emphasis on licensee identification and correction of
violations, (2) clarify the staff's authority to exercise
discretion, and (3) revise the Safeguards supplement to
the Policy to provide more flexibility in addressing the
significance of safeguards issues. Other less significant
changes address assessment factors for civil penalties,
the Transportation and Fuel Cycle and Materials Operation
supplements, staff discretion, 10 CFR 50.59 violations,
Severity Level V violations, and fitness for duty matters.

Enclosure 1 to this paper is the proposed revision of the
Policy with a Statement of Considerations. Enclosure 2
contains a comparative text showing the existing and changed
text of the Policy. Although the Statement of Considerations
describes the proposed changes to the Policy, the significant
changes are discussed below.

The most significant proposed change is to provide increased
incentive for licensees to identify, report, and correct
significant violations. A primary objective of the
Commission's Enforcement Policy is to encourage licensees
to identify and correct violations. There are inherent
safety and operational benefits in identifying and correcting
violations prior to their disclosure by failure of systems
to perform their intended safety functions. Nevertheless,
there are situations where a licensee should receive a civil
penalty even though it identified, reported, and corrected
a significant violation. The existing Enforcement Policy
collectively weighs the factors of identification and

Contact: James Lieberman, OE
(x20741)

reporting, corrective actions, past performance, prior notice, multiple occurrences, and duration to adjust the base civil penalty up or down. It is the balance of these factors that determines the amount of a civil penalty.

The staff recognizes that imposing civil penalties for licensees who identify, report, and correct violations may provide disincentives to licensees' employees who may not want to discredit their companies. Therefore, to increase the incentive for a licensee to scrutinize its operations without the need for NRC involvement, the staff proposes, as described more fully in the enclosures, to provide three additional cases in Section V.G. for which it would be appropriate not to propose a civil penalty for a Severity Level III violation. In these additional cases, the staff proposes not to consider specifically all the adjustment factors of the Enforcement Policy. The first case involves a licensee identified, reported, and corrected violation where the violation was not (1) reasonably preventable by the licensee's action in response to a previous regulatory concern or prior notice of a problem within two years of the inspection, (2) willful, and (3) representative of a breakdown in management controls. The second case involves relatively old violations identified, reported, and corrected as a result of a licensee aggressively pursuing a voluntary formal program to address past errors such as those involving engineering, design, or installation problems. The third case involves the licensee identifying, reporting, and correcting additional examples of a violation for which enforcement action has been taken. These additional cases are examples of discretion that would be exercised where warranted by the circumstances.

The Enforcement Policy literally provides for the foregoing type of judgment. In Section V.B., the Enforcement Policy provides that civil penalties are considered for Severity Level III violations unlike Severity Level I and II violations for which civil penalties are imposed absent mitigating circumstances. In addition, Section VIII, Responsibilities, provides that the staff has the discretion whether to impose a civil penalty after considering the principles in the Enforcement Policy, the technical significance of the violation and the circumstances surrounding the violation. Thus, the policy as written provides discretion whether to propose a civil penalty for a violation at a Severity Level III. However, the Commission has directed the staff to seek Commission approval if the staff believes a civil penalty is not appropriate for a Severity Level III violation for reasons other than the mitigating factors and percentages of the policy. (Memorandum from S. Chilk, SECY, to V. Stello, Jr., EDO, Selected Application of Enforcement Discretion by the

Director, Office of Inspection and Enforcement, COMTR-86-6, August 6, 1986.) By setting out in advance circumstances for exercising discretion in the three cases, the need for Commission consultation in these types of cases will be alleviated.

In addition, the staff believes it is appropriate to have the authority to refrain from issuing a civil penalty based on the merits of the case where a penalty is clearly not warranted after considering the guidance in the policy. A sentence is proposed to be added to the end of Section V.G. to provide this discretion. This is consistent with the policy as written in Section VII. This clarification is important because as stated in the policy it is necessary to exercise judgement and discretion in determining whether or not to take enforcement actions. In some cases enforcement actions are clearly not warranted. Taking enforcement action in such cases by applying a mechanistic approach may not achieve a useful purpose and may be counterproductive. The policy would provide some factors that might be considered before exercising this discretion. To provide a check on the use of this discretion in view of the past concerns of the Commission, the staff would consult with the Commission for the first three cases and, thereafter, provide advance notice with an extended Enforcement Notice (EN) (5 days rather than the normal 3 days) to the Commission before exercising this discretion.

The staff also is proposing to increase a penalty where the NRC identifies a significant violation. In comparing the resources of a licensee with the limited inspection resources of NRC, the licensee should identify significant violations before the NRC does so. Therefore, the staff is proposing a 50% escalation factor to be applied when the NRC identifies a significant violation. This should provide additional incentive for a licensee to identify the violation before NRC.

The staff also is proposing to increase the escalation percentage for lack of a licensee's response to prior notice from 50% to 100% because the staff expects a licensee to avoid violations where it has been given reasonable notice. This should provide added incentive to licensees to follow up on potential problems. As part of the change to the section on prior notice, the staff proposes to include as prior notice information received at other facilities the licensee controls. This addresses a lesson learned from TVA and should encourage a licensee to consider corporate-wide corrective action. Other changes to the assessment process include increasing the percentage to be applied for multiple examples from up to 50% to up to 100%. It is appropriate to allow for a higher penalty to be able to better reflect the increased significance of multiple

violations. Also an escalating percentage is provided for duration of the violation to give greater uniformity in the application of this factor. The prior performance factor is also proposed to be changed to provide more flexibility to consider overall past performance and to provide guidance on the appropriate period to consider for prior performance .

These changes to the assessment process provide a balanced approach that appropriately considers who identifies the violation, current versus past performance, prior notice, and significance of the violation as a result of its duration or number of examples. It should further public health and safety by encouraging good current licensee performance and, conversely, penalizing poor performance.

In addition to the assessment process, changes are being proposed to revise the Safeguards supplement. The Safeguards supplement, Supplement III, is being changed to provide more flexibility to better reflect the significance of safeguards violations especially in the area of access controls, which is one of the more frequent areas of escalated enforcement. Current examples are too rigid in some areas to properly describe the safety significance of the violations. The revised supplement considers the significance of an access control problem as a function of the ease of exploitation (predictability, identifiability, and ease of passage) to determine the severity level of a violation in this area.

Changes to the Policy also are also proposed for the Transportation supplement, Supplement V, to make it more consistent with the Health Physics supplement, Supplement IV. In addition, a change is also proposed to allow the staff the flexibility not to issue notices of violations for certain isolated Severity Level V violations that are documented in a report. This should save some resources for both the staff and licensees for these minor violations. The Policy and accompanying Statement of Considerations will also reemphasize that discretion is exercised in determining severity levels based on technical significance since the examples in the supplements are only guidance and are not controlling.

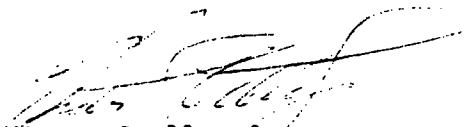
A change to the Policy is proposed to reflect the changes to Fuel Cycle and Materials Operations supplement, Supplement VI, for violations involving diagnostic misadministrations in accordance with SECY 88-154. A change is also proposed in Section V.E., Enforcement Actions Against Individuals, to provide more emphasis on fitness for duty.

Other minor changes are described in the accompanying Statement of Considerations.

Consistent with past revisions of the Enforcement Policy, the revisions would be effective upon issuance. Comments received would be appropriately considered.

Coordination: The Office of the General Counsel has no legal objection to the policy revisions.

Recommendation: The Revised Enforcement Policy be approved for publication in the Federal Register to be effective upon publication.



Victor Stello, Jr.
Executive Director for Operations

Enclosures:

1. Revised Enforcement Policy
2. Comparative Text

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. August 19, 1988.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT August 12, 1988, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected. Affirmation of this paper will be scheduled following receipt of votes.

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ENCLOSURE 1
REVISED ENFORCEMENT POLICY

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Policy and Procedure for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised policy statement.

SUMMARY: The NRC is publishing revisions to its Enforcement Policy to provide for greater discretion in determining whether or not to issue a civil penalty for certain licensee identified and corrected violations; to provide for higher civil penalties for NRC identified violations, licensee's failures to take action in response to prior notice of concerns at any of its facilities, and multiple examples of significant violations; to clarify the assessment factors for corrective action, past performance and duration; to modify the severity level examples involving violations of 10 CFR 50.59 and medical misadministrations, to revise the Transportation and Safeguards supplements; and to make minor deletions and language changes. The Enforcement Policy statement is intended to inform licensees, vendors, and the public of the bases for taking various enforcement actions. The policy is codified as Appendix C to 10 CFR Part 2.

DATES: This revised statement of policy is effective _____, 1988 while comments on the changes are being received. Submit comments on or before _____, 1988.

ADDRESSEES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Hand deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:45 a.m. to 4:15 p.m.

Comments may also be delivered to the NRC Public Document Room, 1717 H Street, NW between 7:45 a.m. and 4:30 p.m.

Copies of comments may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-492-0741).

SUPPLEMENTARY INFORMATION:

Background:

The Commission's Enforcement Policy was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions, most recently on March 23, 1988 (53 FR 9429). Based on additional experience, the Commission has determined that it is appropriate to make additional changes in its Policy and Procedure for Enforcement Actions. The primary changes being made involve providing greater incentives for licensees to identify and correct violations by decreasing civil penalties for certain of those violations

and increasing civil penalties where the licensee fails to identify, prevent, or correct violations, and revising the Transportation and Safeguards supplements of the Enforcement Policy. The Enforcement Policy is codified in 10 CFR Part 2, Appendix C of the Commission's regulations to provide widespread dissemination of this policy. However, the Enforcement Policy is a policy statement and not a regulation. The Commission may accordingly deviate from the Enforcement Policy as is appropriate under the circumstances of a particular case. A similar statement is being added to the Enforcement Policy to avoid any implications that codification of the Policy in the Code of Federal Regulations indicates that the Commission intends that the Enforcement Policy is a binding regulation.

Revisions to the Enforcement Policy

Revisions to the policy now being made are described in the following paragraphs. Only the sections to which changes were made are discussed here. The numbering of the sections tracks the section numbers in the policy.

V.A. NOTICE OF VIOLATION

This section has been changed to provide the staff with the flexibility not to issue a Notice of Violation for inspection findings which involve isolated violations at a Severity Level V. Such violations are by definition of minor regulatory concern. Documentation of the violation in an inspection report or official field notes is sufficient provided corrective action is underway before the inspection ends. "Official field notes" are an alternative to inspection reports used in the materials program for smaller

licensees. Given the minor concern with such violations, a formal reply from a licensee is not needed nor is expenditure of agency resources to prepare a Notice of Violation normally warranted. A Notice of Violation may be issued if the violation was willful, if past corrective actions have not been sufficient, or if the circumstances warrant increasing the severity of Level V violations to a higher severity level.

V.B. CIVIL PENALTY

1. EXERCISE OF DISCRETION (SECTION V.G)

The current policy in Section V.B. provides that civil penalties are imposed, absent mitigating circumstances, for Severity Level I and II violations but are considered for Severity Level III violations. Section VIII, Responsibilities, provides that the staff has the discretion as to whether or not it should propose a civil penalty after considering the principles in the Enforcement Policy, the technical significance of the violations, and the surrounding circumstances. Thus, the policy as written provides the staff with discretion as to whether or not to propose a civil penalty for a violation at a Severity Level III. However, the NRC practice has been that civil penalties are issued for Severity Level III violations absent mitigating circumstances. The staff may, under appropriate circumstances, classify a violation at a Severity Level IV even if the supplements provide a similar example at a Severity Level III based on the significance and circumstances of the violation because the examples in the supplements are by the policy, examples and not controlling. However, once the

determination is made that a violation should be categorized at a Severity Level III, the violation is of significant regulatory concern, and a civil penalty is proposed absent mitigating circumstances unless the staff seeks Commission approval not to issue a penalty.

There are three Severity Level III situations where it may not be appropriate to issue civil penalties in the interest of encouraging licensee identification, reporting, and correction of violations and minimizing the potential to provide disincentives for licensees to identify and correct violations. Accordingly, the policy has been changed in Sections V.B. and V.G. to provide three additional examples for exercising discretion in not proposing civil penalties. This should increase incentives for a licensee to scrutinize its operations without NRC involvement.

The first example involves licensee identified and corrected violations where the violation was (1) not reasonably preventable by licensee action in response to a previous regulatory concern or prior notice of a problem within two years of the inspection or since the last two inspections, (2) not willful, and (3) not representative of a breakdown in management controls. This change is intended to avoid penalizing a licensee whose current performance is consistent with the objectives of the policy, i.e., identifying, reporting, and correcting violations. Under this provision the staff may exercise discretion and not propose a civil penalty for a Severity Level III violation even if the violation existed for an extended duration. This provision would not be used for Severity Level III violations involving release of radioactive material or overexposures in excess of regulatory limits because of the significance of such failures.

The second example involves past violations that are not likely to be identified during routine surveillance or QA activities of a licensee. Many licensees have or are embarking on major voluntary efforts to review past activities. From a safety perspective clearly there are benefits for both a licensee and the public to have past problems such as those involving engineering, design, or installation identified, reported and corrected before a system with deficiencies is called upon to operate. In these cases discretion could be exercised regardless of prior notice, past performance, or duration to avoid disincentives for a licensee who is aggressively pursuing a formal program to identify and correct past problems. If a licensee's program identifies Severity Level III violations, the staff would not intend to subsequently exercise further discretion for similar violations later identified unless the licensee's program is being accelerated to provide assurance that similar significant issues do not exist.

The third example involves additional occurrences of a violation for which enforcement action has been taken. This change is to encourage a licensee, as part of corrective actions, to locate additional violations with the same root cause without the concern that it may be penalized if it identifies additional violations, reports, and corrects them. In applying this example, the staff will consider the reasonableness of the licensee's action, the timeliness of the action, and whether the later violations change the safety significance or character of the initial regulatory concern.

These examples are, as indicated, examples of where discretion may be exercised. Whether or not to exercise the discretion is dependent on the circumstances of the particular case.

In addition to the three additional examples of discretion being provided, the Deputy Executive Director for Regional Operations' authority to not issue a civil penalty, as stated in Section VII of the Policy, based on the merits of the case is restated in this section. This discretion is expected to be used only where application of the guidance in the policy is unwarranted and requires advance notice to the Commission.

2. Mitigating and Escalating Factors

a. Identification and Reporting

This factor is being retitled and changed to permit a penalty to be increased if NRC identifies a violation. This is designed to provide an additional incentive for licensees to identify violations. Given the number of licensees' employees and the limited number of NRC inspectors, Severity Level I, II, or III violations should be identified first by licensees and, therefore, NRC should not be identifying significant violations. Thus, it is appropriate to increase a penalty if NRC identifies the violation. This factor has also been changed to delete the reference to the length of time the violation occurred because that is considered under the duration factor. The issue under this factor is whether a licensee should have reasonably identified the violation earlier.

b. Corrective Action

This factor is being changed to delete the term "unusually." In the past, the policy has been applied to require corrective action to not only be prompt and extensive but to be unusually so before a full 50% mitigation is allowed for corrective action. In some cases

there is nothing unusual about the corrective action even though it is clear that prompt and extensive corrective action was taken.

This clarification is intended to provide the discretion for 50% mitigation when quality action is taken. Whether or not to grant 50% mitigation will be based primarily on the three factors stated in the policy: timeliness, initiative, and comprehensiveness. The weight to be given to each of these elements is dependent on the circumstances of the particular case.

c. Past Performance

In the past the time period for assessing prior performance for a Severity Level III or greater violation has not been specified. The policy has been changed to state that the past two years or the period within the last two inspections, whichever is the longer period, should be the normal interval for considering past performance. This time period should allow sufficient time to determine a performance trend for applying this factor. This time period maybe longer (two past inspections rather than one past inspection) than the time period for considering civil penalties for repetitive Severity Level IV violations because some material licensees are inspected at a

frequency greater than one year and a longer time period, i.e., two past inspections, is needed to establish a performance trend for those licensees.

In addition, this factor has been changed to provide more flexibility in considering past performance in the assessment process. Currently, past performance focuses on prior performance in the area of concern though overall performance can be considered. The effect of deleting the reference to general area of concern is to permit greater consideration of overall performance. With the change both overall performance and performance in the area of concern may be considered.

d. Prior Notice

This factor has been changed to permit a penalty to be increased up to 100% of the base penalty rather than 50%. This change is being made to provide incentives to respond to notices of safety concerns. If a licensee is put on notice of a problem by its own actions, its responsible employees, industry, or NRC and fails to take action to prevent a Severity Level III violation, then a penalty should be substantially increased.

Another important change to this factor is to consider notice arising out of activities of a licensee at other facilities it controls whether or not under different licenses. This change comes out of the lessons learned from the Tennessee Valley Authority problems but is equally applicable to other reactors and material licensees who

hold more than one license or have more than one facility or location. If a licensee is aware of a significant issue at one of its facilities that needs corrective action, NRC expects that the licensee will consider the application of corrective action at all other licensed operations it controls. The failure to act in such a responsible manner will now be the basis for increasing a penalty to provide additional incentives for the licensee to identify and correct its problems. A licensee should not be dependent on the NRC to identify a violation once the licensee has had reasonable notice of a potential problem. This does not mean every similar violation at another facility of the licensee will be cause for escalation. But escalation may occur if it was reasonable to expect the licensee to consider the need for corrective action at its other facilities.

e. Multiple Examples

This factor has been changed to permit a penalty to be increased up to 100% of the base penalty rather than 50%. This change is being made to be able to better reflect the added significance of multiple violations.

f. Duration

The policy has been clarified by making duration a specific factor to consider in the assessment process and to assign a percentage to be applied to the base amount. This was done to provide greater assurance of uniform application of the duration factor. Section 234 of the Atomic Energy Act of 1954, as amended, provides that continuing

violations may receive separate daily assessments. Whether to do so is a function of the circumstances of each case. It is clearly appropriate to have daily assessments where there is willful conduct, i.e., a licensee permitted a violation to continue. In other cases an increased assessment may be warranted based on significance. It is appropriate, for those cases for which a penalty is not assessed on a daily basis, to be able to increase a penalty up to 100% to address the significance of the violation.

It is recognized that a number of factors consider duration. Prior notice does so from the view that the licensee may have had time to avoid a violation from occurring. But that is different from the duration of a violation. When a penalty is not mitigated for licensee identification because of the age of the violation, NRC is focusing attention on the fact that a licensee performing as expected should have identified the violation earlier and not that the violation is more significant because of the length of time the violation existed. Under the duration factor the issue is whether the violation is more significant because of its duration.

V.D. ESCALATION OF ENFORCEMENT SANCTIONS

This section has been changed to delete the reference to progression based on a single license. This is an area where judgment and discretion are required. The policy is changed to maximize the flexibility in this area. As described earlier, the prior notice section of the policy is also being changed to specifically consider the issue of the failure to take

corrective action for similar violations at other facilities controlled by a licensee.

V.E. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

This section is being clarified to indicate that enforcement action may be taken against an individual's license or against a corporate license that may impact an individual where the person's conduct places into question NRC's reasonable assurance that licensed activities will be properly conducted. Actionable conduct includes matters that raise integrity, competence, fitness for duty, or other issues that may not necessarily be a violation of Commission requirements. Also added in this section is a provision to indicate that action would not be taken for a willful violation in an emergency provided the standards of 10 CFR 50.54(x) are met.

V.G. DISCRETION

In addition to the changes already described, this section is being changed to clarify that where discretion is exercised to not issue a Notice of Violation, the violation will be described in an inspection report or official field notes. This will assist the agency in tracking repetitive concerns for purposes of past performance.

VIII. RESPONSIBILITIES

The change in this section clarifies that judgment is exercised in issuing Notices of Violations as well as civil penalties. For example, while most

violations result in at least a Notice of Violation, discretion may be exercised in developing the particular citation to use including the number of examples of the violation to be included in the citation and the legal requirement violated. In addition, discretion may be exercised in determining whether there is sufficient evidence to issue a citation. Similarly, discretion may be exercised in determining the appropriate severity level after considering the guidance in the supplements which are examples and not controlling. For example, it may be appropriate to categorize an overexposure violation resulting from a "hot particle" at a lower severity level than described for the level of exposure because of the significance of the particular exposure.

The last sentence of footnote 5 has been deleted because it is not needed in the policy. Should there be additional delegation to Regional Offices, the policy can be changed at that time.

SUPPLEMENT I - REACTOR OPERATIONS

Example C.6. involving violations of 10 CFR 50.59 has been changed to clearly indicate that a licensee who violates that requirement and operates in an unanalyzed condition may be subject to a Severity Level III citation even if, after the fact, it turns out that an unreviewed safety question or a conflict with a technical specification does not exist. This is designed to capture the circumstances where a reasonable engineer would need to perform an evaluation before concluding that an unreviewed safety question or a conflict with a technical specification did not exist but did not do the evaluation.

SUPPLEMENT III - SAFEGUARDS

This supplement has been extensively rewritten to provide more flexibility to address the significance of safeguards violations. In addition, similar examples of different severity levels for types of violations have been added. The most significant change is to address the area of access control violations which is one of the most frequent issues, resulting in escalated enforcement action in the safeguards area. The significance of an access control problem is a function of the ease of exploitation. The policy has been changed to consider the predictability, identifiability, and ease of passage of the vulnerability demonstrated by the violation in determining the severity level of an access control violation. Predictability refers to a vulnerability that lasts for a long period of time (and is known to exist) or if it recurs with some predictable regularity or schedule, allowing the potential intruder to know when to attempt the penetration. Identifiability refers to the ease with which an observer can (1) see the opening, and (2) know that it leads somewhere advantageous to a saboteur. Ease of passage refers to the structure of the opening, whether the potential intruder can maneuver himself/herself along the interior of the pathway to gain access to the area, and includes the environment of the opening, i.e., whether there is continuous flushing or some other environmental factor that makes the pathway inhospitable to humans.

SUPPLEMENT V - TRANSPORTATION

This supplement has been changed to make the radiation levels and contamination levels more consistent with the health physics examples

in Supplement IV. In addition, flexibility has been added to address violations associated with shipping papers, labeling, and packaging. Examples have been added for Severity Level IV violations to indicate that failure to register as an authorized user of NRC-Certified Transport packages or to assure that packages meet applicable requirements are more than a minor regulatory concern.

SUPPLEMENT VI - FUEL CYCLE AND MATERIALS PROGRAM

This supplement has been changed to provide that multiple errors that result in diagnostic misadministrations or a recurrent violation that results in a diagnostic misadministration may be categorized at a Severity Level III. This change is being made to emphasize the need to comply with requirements in order to avoid unnecessary and unsuspected exposures to the public.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552, the NRC is adopting the following statement of policy as Appendix C to 10 CFR Part 2.

Part 2 - Rules of Practice for Domestic Licensing Proceedings

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections

2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Appendix C to Part 2 is revised to read as follows:

APPENDIX C - GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission and its staff in initiating enforcement actions, and of presiding officers, the Atomic Safety and Licensing Appeal Boards, and the Commission in reviewing these actions.

This statement is applicable to enforcement in matters involving the public health and safety, the common defense and security, and the environment. ^{1/} This statement of general policy and procedure is published in the Code of Federal

^{1/} Antitrust enforcement matters will be dealt with on a case-by-case basis.

Regulations to provide widespread dissemination of the Commissions Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as is appropriate under the circumstances of a particular case.

I. INTRODUCTION AND PURPOSE

The purpose of the NRC enforcement program is to promote and protect the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment by:

- . Ensuring compliance with NRC regulations and license conditions;
- . Obtaining prompt correction of violations and adverse quality conditions which may affect safety;
- . Deterring future violations and occurrences of conditions adverse to quality; and
- . Encouraging improvement of licensee and vendor ^{1a/} performance, and by example, that of industry, including the prompt identification and reporting of potential safety problems.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees or vendors who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects. Each enforcement action is dependent on the circumstances of the case and requires the exercise of

^{1a/} The term "vendor" means a supplier of products or services to be used in an NRC-licensed facility or activity.

discretion after consideration of these policies and procedures. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

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 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 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 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 NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

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

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 appropriate NRC Office Director initiates the civil penalty process by issuing a notice of violation and proposed imposition of a civil penalty. The licensee is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the licensee's response, the Director may mitigate, remit, or impose the civil penalty. An opportunity is provided for a hearing if a civil penalty is imposed.

The procedure for issuing an order to show cause why a license should not be modified, suspended, or revoked or why such other action should not be taken is set forth in 10 CFR 2.202. The mechanism for modifying a license by order is set forth in 10 CFR 2.204. These sections of Part 2 provide an opportunity for a hearing to the affected licensee. However, the NRC is authorized to make orders immediately effective if the public health, safety or interest so requires or, in the case of an order to show cause, if the alleged violation is willful.

III. SEVERITY OF VIOLATIONS

Regulatory requirements ^{2/} have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process.

^{2/} 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, violations are categorized in terms of five 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 not directly covered by one of the above listed areas, e.g., export license activities, will be placed in the activity area most suitable in light of the particular violation involved. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level V 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 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. Severity Level V violations are of minor safety or environmental concern.

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 Reactor Construction. While examples are provided in Supplements I through VIII for determining the appropriate severity level for violations in each of the eight activity areas, the examples are neither exhaustive nor controlling.

These examples do not create new requirements. Each is designed to illustrate the significance which 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.

In each case, the severity of a violation will be characterized at the level best suited to the significance of the particular violation. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

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 here

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 of the person involved in the violation (e.g., first-line supervisor or senior manager), the significance of any underlying violation, the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness), and the economic 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.

The NRC expects licensees to provide full, complete, timely, and accurate 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. 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 which it failed to report. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter.

IV. ENFORCEMENT CONFERENCES

Whenever the NRC has learned of the existence of a potential violation for which a civil penalty or other escalated enforcement action may be warranted, or recurring nonconformance on the part of a vendor, the NRC will normally hold an enforcement conference with the licensee or vendor prior to taking enforcement action. The NRC may also elect to hold an enforcement conference for other violations, e.g., Severity Level IV violation which, if repeated, could lead to escalated enforcement action. The purpose of the enforcement conference is to (1) discuss the violations or nonconformance, their significance and causes, and the licensee's or vendor's corrective actions, (2) determine whether there are any aggravating or mitigating circumstances, and (3) obtain other information which will help determine the appropriate enforcement action.

In addition, during the enforcement conference, the licensee or vendor will be given an opportunity to explain to the NRC what corrective actions (if any) were taken or will be taken following discovery of the potential violation or nonconformance. Licensees or vendors will be told when a meeting is an enforcement conference. Enforcement conferences will not normally be open to the public.

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 modifying, suspending, or revoking a license, will be taken prior to the enforcement conference. In such cases, an

enforcement conference may be held after the escalated enforcement action is taken.

V. ENFORCEMENT ACTIONS

This section describes the enforcement sanctions available to NRC and specifies the conditions under which each may be used. The basic sanctions are notices of violation, civil penalties, and orders of various types. Additionally, related administrative mechanisms such as bulletins and confirmatory action letters, notices of nonconformance and notices of deviation are used to supplement the enforcement program. In selecting the enforcement sanctions to be applied, 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 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, action by an NRC regional office is appropriate in the form of a Notice of Violation requiring a formal response from the recipient describing its corrective actions. In situations involving nonconformance on the part of vendor, a Notice of Nonconformance will be issued. The relatively small number of cases involving elevated enforcement action receives substantial attention by the public, and may have significant impact on the licensee's operation. These elevated enforcement actions include civil penalties; orders modifying, suspending or revoking licenses; or orders to cease and desist from designated activities.

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 normally requires the recipient to provide a written statement describing (1) corrective steps which have been taken and the results achieved; (2) corrective steps which will be taken to prevent recurrence; and (3) the date when full compliance will be achieved. NRC may require responses to notices of violation to be under oath. Normally, responses under oath will be required only in connection with civil penalties and orders.

NRC uses the notice of violation as the standard method for formalizing the existence of a violation. A notice of violation is normally the only enforcement action taken, except in cases where the criteria for civil penalties and orders, as set forth in Sections V.B and V.C, respectively, are met. In such cases, the notice of violation will be issued in conjunction with the elevated actions.

However, violation findings warranting the exercise of discretion under Section V.G.1 will generally not result in a Notice of Violation. In addition, for isolated Severity Level V violations, a notice of violation normally will not be issued regardless of who identifies the violation provided that the licensee has initiated appropriate corrective action before the inspection ends. In these situations, a formal response from the licensee is not required and the inspection report or official field notes serves to document the violations and the corrective actions. However, a notice of violation will normally be issued for willful

violations, if past corrective actions for similar violations have not been sufficient to prevent recurrence, or if the circumstances warrant increasing the severity of Level V violations to a higher severity level.

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 (a) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders, (b) any requirement for which a license may be revoked, or (c) reporting requirements under Section 206 of the Energy Reorganization Act. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations.

Civil penalties are proposed absent mitigating circumstances for Severity Level I and II violations, are considered for Severity Level III violations, and may be imposed for Severity Level IV violations that are similar ^{3/} to previous violations for which the licensee did not take effective corrective action.

^{3/} The word "similar," as used in this policy, refers to those violations which could have been reasonably expected to have been prevented by the licensee's corrective action for the previous violation.

In applying this guidance for Severity Level III violations, NRC may, notwithstanding the mitigating and escalating factors in this section, refrain from proposing a civil penalty for violations that warrant the exercise of discretion under Section V.G. As to Severity Level IV violations, NRC normally considers civil penalties only for similar Severity Level IV violations that occur after the date of the last inspection or within two years, whichever period is greater.

Civil penalties will normally be assessed for knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act, and for any willful violation of any Commission requirement including those at any severity level.

NRC imposes different levels of penalties for different severity level violations and different classes of licensees. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs. 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 such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to 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 such penalties take into account a licensee's "ability to pay." In determining the amounts of civil penalties for licensees for whom the tables do not reflect the ability to pay, NRC will consider as necessary an increase or decrease on a case-by-case basis.

NRC attaches great importance to comprehensive licensee programs for detection, correction, and reporting of problems that may constitute, or lead to, violation of regulatory requirements. This is emphasized by giving credit for effective licensee audit programs when licensees find, correct, and report problems expeditiously and effectively. To encourage licensee self-identification and correction of violations and to avoid potential concealment of problems of safety significance, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations which are identified, reported (if required), and effectively corrected by the licensee.

On the other hand, ineffective licensee programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant NRC-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, NRC intends to apply its full enforcement authority where such action is warranted, including issuing appropriate orders and assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$100,000 per violation, per day. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of such involvement may not be used to mitigate a civil penalty.

Allowance of mitigation could encourage lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

NRC reviews each proposed civil penalty case on its own merits and adjusts the base civil penalty values upward or downward appropriately. Tables 1A and 1B identify the base civil penalty values for different severity levels, activity areas, and classes of licensees. After considering all relevant circumstances, adjustments to these values may be made for the factors described below:

1. Identification and Reporting

Reduction of up to 50% of the base civil penalty shown in Table 1 may be given when a licensee identifies the violation and promptly reports the violation to the NRC. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the licensee does not take immediate action to correct the problem upon discovery. On the other hand, the base penalty may be increased by as much as 50% if the NRC identifies the violation.

2. Corrective Action to Prevent Recurrence

Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the

licensee takes corrective action, including actions to prevent recurrence, may result in up to a 50% increase or decrease in the base civil penalty shown in Table 1. For example, very extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the timeliness of the corrective action, degree of licensee initiative, and comprehensiveness of the corrective action--such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

3. Past Performance

Reduction by as much as 100% of the base civil penalty shown in Table 1 may be given for prior good performance. On the other hand, the base civil penalty may be increased as much as 100% for prior poor performance.

In weighing this factor, consideration will be given to, among other things, the effectiveness of previous corrective action for similar problems, overall performance such as Systematic Assessment of Licensee Performance (SALP) evaluations for power reactors, and prior performance including Severity Level IV and V

violations in the area of concern. For example, failure to implement previous corrective action for prior similar problems may result in an increase in the civil penalty. For purposes of assessing past performance, violations within the past two years of the inspection at issue or the period within the last two inspections whichever is longer will be considered.

4. Prior Notice of Similar Events

The base civil penalty may be increased as much as 100% for cases where the licensee had prior knowledge of a potential problem as a result of a licensee review, a specific NRC or industry notifications or other reasonable indication of a potential problem, and had failed to take effective preventive steps. Prior notice may include findings of NRC, the licensee, or industry made at other facilities of the licensee where it is reasonable to expect the licensee to take action to prevent similar problems at the facility subject to the enforcement action at issue.

5. Multiple Occurrences

The base civil penalty may be increased as much as 100% where multiple examples of a particular violation are identified during the inspection period.

6. Duration

The duration of a violation may also be considered in assessing a civil penalty. A greater civil penalty may be imposed if a violation continues for more than a day. For example:

(1) If a licensee is aware of the existence of a condition which results in an ongoing violation and fails to initiate corrective action, each day the condition existed may be considered as a separate violation and, as such, subject to a separate additional civil penalty.

(2) If a licensee (a) is unaware of a condition resulting in a continuing violation, but clearly should have been aware of the condition or (b) had an opportunity to correct the condition but failed to do so, a separate violation and attendant civil penalty may be considered for each day that the licensee clearly should have been aware of the condition or had an opportunity to correct the condition, but failed to do so.

(3) Alternatively, whether or not a licensee is aware or clearly should have been aware of a violation that continues for more than one day, the base civil penalty may be increased as much as 100% to reflect the added significance resulting from the duration of the violation.

The above factors are additive. However, in no instance will a civil penalty for any one violation exceed \$100,000 per day.

The Tables and the mitigating factors determine the civil penalties which may be assessed for each violation. However, to focus on the fundamental underlying causes of a problem for which enforcement action appears to be warranted, the cumulative total for all violations which contributed to or

were unavoidable consequences of that problem may be based on the amount shown in the table for a problem of that Severity Level, as adjusted. If an evaluation of such multiple violations shows that more than one fundamental problem is involved, each of which, if viewed independently, could lead to civil penalty action by itself, then separate civil penalties may be assessed for each such fundamental problem. In addition, the failure to make a required report of an event requiring such reporting is considered a separate problem and will normally be assessed a separate civil penalty, if the licensee is aware of the matter that should have been reported.

TABLE 1A
BASE CIVIL PENALTIES

	<u>Plant Operations, Const, Health Physics and EP</u>	<u>Safeguards</u>	<u>Transportation Greater than Type A Quantity 1/</u>	<u>Type A Quantity or less 2/</u>
a. Power Reactors	\$100,000	\$100,000	\$100,000	\$5,000
b. Test Reactors	10,000	10,000	10,000	2,000
c. Research Reactors & Critical Facilities	5,000	5,000	5,000	1,000
d. Fuel Fabricators and Industrial Processors 3/	25,000	100,000 4/	25,000	5,000
e. Mills and Uranium Conversion Facilities	10,000	--	5,000	2,000
f. Industrial Users of Material 5/	10,000	--	5,000	2,000
g. Waste Disposal Licensees	10,000	--	5,000	2,000
h. Academic or Medical Institutions 6/	5,000	--	2,500	1,000
i. Other Material Licensees	1,000	--	2,500	1,000

1/ Includes irradiated fuel, high level waste, unirradiated fissile material, and any other quantities requiring Type B packaging.

2/ Includes low specific activity waste (LSA), low level waste, Type A packages, and excepted quantities and articles.

3/ Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

4/ This amount refers to Category 1 licensees (as defined in 10 CFR 73.2 (bb)). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of \$50,000.

5/ Includes industrial radiographers, nuclear pharmacies, and other industrial users.

6/ This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

TABLE 1B

BASE CIVIL PENALTIES

<u>SEVERITY LEVEL</u>	<u>BASE CIVIL PENALTY AMOUNT</u> <u>(% of Amount Listed in Table 1A)</u>
I	100%
II	80%
III	50%
IV	15%
V	5%

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 and 2.204). Orders may be issued as set forth below. Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate.

(1) License Modification Orders are issued when some change in licensee equipment, procedures, 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 a licensee does not respond to a notice of violation where a response was required,

(d) When a licensee refuses to pay a fee required by 10 CFR Part 170, 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 are typically used to stop an unauthorized activity that has continued after notification by NRC that such activity is unauthorized.

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 cause why the order should not be issued in the proposed manner.

D. ESCALATION OF ENFORCEMENT SANCTIONS

NRC considers violations of Severity Level I, II, or III to be serious. If serious violations occur, NRC will, where necessary, issue orders in conjunction with civil penalties to achieve immediate corrective actions and to deter further recurrence of serious violations. NRC carefully considers the circumstances of each case in selecting and applying the sanction(s) appropriate to the case in accordance with the criteria described in Sections V.B and V.C, above.

Examples of enforcement actions that could be taken for similar Severity Level I, II, or III violations are set forth in Table 2. The actual progression to be used in a particular case will depend on the

circumstances. However, enforcement sanctions will normally escalate for recurring similar violations.

TABLE 2

EXAMPLES OF PROGRESSION OF ESCALATED ENFORCEMENT ACTIONS FOR SIMILAR VIOLATIONS IN THE SAME ACTIVITY AREA UNDER THE SAME LICENSE

Severity of Violation	Number of similar violations from the date of the last inspection or within the previous two years (whichever period is greater)		
	1st	2nd	3rd
I	a+b	a+b+c	d
II	a	a+b	a+b+c
III		a	a+b

a. Civil penalty

b. Suspension of affected operations until the Office Director is satisfied that there is reasonable assurance that the licensee can operate in compliance with the applicable requirements; or modification of the license, as appropriate.

c. Show cause for modification or revocation of the license, as appropriate.

d. Further action, as appropriate.

E. 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 will normally be taken only when there is little doubt 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, IV or V 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. 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.

Examples of situations which could result in enforcement actions against individuals include, but are not limited to, violations which involve:

- ° Recognizing a violation of procedural requirements and willfully not taking corrective action.
- ° Willfully performing unauthorized bypassing of required reactor safety systems.
- ° Willfully defeating alarms which have safety significance.
- ° Unauthorized abandoning of reactor controls.
- ° Inattention to duty such as sleeping, being intoxicated while on duty, or otherwise not meeting requirements for fitness for duty.

- ° Willfully taking actions that violate TS Limiting Conditions for Operation (enforcement action for a willful violation of 10 CFR 50.54(x) will be taken only if the operator failed to meet the standards of that regulation, i.e., acted unreasonably considering all the relevant circumstances surrounding the emergency.)
- ° Falsifying records required for NRC regulations or by the facility licensee.
- ° Willfully failing to take "immediate actions" of emergency procedures.
- ° Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel.

Any proposed enforcement action against individuals must be done with the concurrence of the Deputy Executive Director for Regional Operations. The opportunity for an Enforcement Conference with the individual will usually be provided.

Examples of sanctions that may be appropriate against NRC-licensed operators are:

- ° issuance of a letter of reprimand to be placed in the operator's license file,
- ° issuance of a Notice of Violation, and

- ° suspension for a specified period, modification, or revocation of the license.

The sanctions are listed in escalating order of significance. ^{4/} The particular sanction to be used should be determined on a case-by-case basis.

In addition, NRC may take enforcement action 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, enforcement action 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 individual, an Order modifying the facility license to require the removal of the individual from all nuclear-related activities for a specified period of time or indefinitely may be appropriate.

F. REOPENING CLOSED ENFORCEMENT ACTIONS

If significant new information is received or obtained by NRC which

^{4/} 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 for violations 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.

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 for Regional Operations.

G. EXERCISE OF DISCRETION

Because the NRC wants to encourage and support licensee initiative for self-identification and correction of problems, NRC may exercise discretion as follows:

1. NRC may refrain from issuing a notice of violation for a violation described in an inspection report or official field notes that meets all of the following criteria:
 - a. It was identified by the licensee;
 - b. It is normally classified at a Severity Level IV or V;
 - c. It was reported, if required;
 - d. It was or will be corrected, including measures to prevent recurrence, within a reasonable time; and

- e. It was not a willful violation or a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation.

2. The NRC may refrain from issuing a notice of violation or a proposed civil penalty for violations described in an inspection report or official field notes that meet all of the following criteria:

- a. (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 the licensee is forced into an extended shutdown or work stoppage related to generally poor performance over a long period; (ii) the licensee has developed and is aggressively implementing during the shutdown a comprehensive program for problem identification and correction; and (iii) NRC concurrence is needed by the licensee prior to restart;
- b. Non-willful violations are identified by the licensee as the result of its comprehensive program, or as a result of an employee allegation to the licensee. If NRC identifies the violation, the NRC should determine whether enforcement action is necessary to achieve remedial action;
- c. The violations are based upon activities of the licensee prior to the events leading to the shutdown; and

- d. The violations would normally not be categorized as higher than Severity Level III violations under the NRC's Enforcement Policy.
3. The NRC may refrain from proposing a civil penalty for a Severity Level III violation not involving an overexposure or release of radioactive material that meets all of the following criteria:
- a. It was identified by the licensee and reported;
 - b. Comprehensive corrective action has been taken or is well underway within a reasonable time following identification;
 - c. It was not a violation that either (i) was reasonably preventable by the licensee's action in response to a previous regulatory concern identified within the past two years of the inspection or since the last two inspections which ever is longer or (ii) reasonably should have been corrected prior to the violation because the licensee had prior notice of the problem involved; and
 - d. It was not a willful violation or indicative of a breakdown in management controls.
4. The NRC may refrain from proposing a civil penalty for a Severity Level III violation involving a past problem, such as in engineering, design, or installation, that meets the following criteria:

- a. It was identified by a licensee as a result of a licensee's voluntary formal effort such as a Safety System Functional Inspection, Design Reconstitution Program, or other program that has a defined scope and timetable which is being aggressively implemented and reported;
 - b. Comprehensive corrective action has been taken or is well underway within a reasonable time following identification; and
 - c. It was not likely to be identified by routine licensee efforts such as normal surveillance or QA activities.
5. If the NRC issues an enforcement action for a violation at a Severity Level III violation and as part of the corrective action for that violation, the licensee identifies other examples of the violation with the same root cause, the NRC may refrain from issuing an additional enforcement action. In determining whether to exercise this discretion, the NRC will consider whether the licensee acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the safety significance or character of the regulatory concern arising out of the initial violation.

Notwithstanding paragraphs 2, 3, 4, and 5 above, a civil penalty may be proposed when judgment warrants it on the basis of the circumstances

of the individual case. For example, civil penalties may be warranted where multiple Severity Level III violations are discovered or where the violation is willful. In addition, as provided in Section VII, Responsibilities, the Deputy Executive Director for Regional Operations may refrain from issuing a civil penalty for a Severity Level III 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 significance of the violation, the overall performance of the licensee, and circumstances, if any, that have changed since the violation provided prior notice has been given the Commission. This discretion is expected to be exercised only where application of the normal guidance in the Policy is unwarranted.

H. RELATED ADMINISTRATIVE ACTIONS

In addition to the formal enforcement mechanisms of notices of violation, civil penalties, and orders, NRC also uses administrative mechanisms, such as bulletins, information notices, generic letters, notices of deviation, notices of nonconformance, and confirmatory action letters to supplement its enforcement program. NRC expects licensees and vendors to adhere to any obligations and commitments resulting from these processes and will not hesitate to issue appropriate orders to licensees to make sure that such commitments are met.

- (1) Bulletins, Information Notices, and Generic Letters are written notifications to groups of licensees identifying specific problems and recommending specific actions.

- (2) 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.
- (3) Confirmatory Action Letters are letters confirming a licensee's or a vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.
- (4) Notices of Nonconformance are written notices describing non-licensees' 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.

I. REFERRALS TO 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 for investigation. Referral to the Department of Justice does not preclude the NRC from taking other enforcement action under this General Statement of Policy. However, such actions will be coordinated with the Department of Justice to the extent practicable.

VI. INACCURATE AND INCOMPLETE INFORMATION

A violation of the regulations on submitting complete and accurate 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 III "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. A licensee official for purposes of application of the Enforcement Policy means a first line supervisor or above as well as a licensed individual, radiation safety officer, or a person listed on a license as an authorized user of licensed material. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to such factors 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 citation 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, 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 above.

VII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

In accordance with 10 CFR 2.790, all enforcement actions and licensees' responses are publicly available for inspection. In addition, press releases are generally issued for civil penalties and orders. In the case of orders and civil penalties related to violations at Severity Level I, II, or III, press releases are issued at the time of the order or the proposed imposition of the civil penalty. Press releases are not normally issued for Notices of Violation.

VIII. RESPONSIBILITIES

The Deputy Executive Director for Regional Operations (DEDRO), as the principal enforcement officer of the NRC, has been delegated the authority to issue notices of violations, civil penalties, and orders. ^{5/} Regional Administrators may also issue notices of violation for Severity Level IV and V violations and may sign notices of violation for Severity Level III violations with no proposed civil penalty and proposed civil penalty actions with the concurrence of the DEDRO. In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, the DEDRO or the Regional Administrator must

^{5/} The Director, Office of Enforcement, acts for the Deputy Executive Director for Regional Operations in the latter's absence or as directed. The Directors of the Offices of Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, and Special Projects have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR, NMSS, and OSP will be confined to actions necessary in the interest of public health and safety. The Director, Office of Administration and Resources Management, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license fees.

exercise judgment and discretion 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 such penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. 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 civil penalties in amounts greater than 3 times the Severity Level I values shown in Table 1A;
- (3) Any proposed enforcement action that involves a Severity Level I violation;
- (4) Any enforcement action that involves a finding of a material false statement;
- (5) Refraining from taking enforcement action for matters meeting the criteria of Section V.G.2.

- (6) Any action the Office Director believes warrants Commission involvement; or
- (7) Any proposed enforcement action on which the Commission asks to be consulted.

IX. VENDOR ENFORCEMENT

The Commission's enforcement policy is also applicable to non-licensees (vendors). 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 are 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 of reactor and materials licensees and Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

The NRC conducts inspections of reactor licensees to determine whether they are ensuring that vendors are meeting their contractual obligations with regard to quality of products or services that could have an adverse effect on safety. As part of the effort of ensuring that licensees fulfill their obligations in this regard, the NRC inspects reactor vendors to determine if they are meeting their obligations. These inspections include examination of the quality assurance programs and their implementation by the vendors through examination of product quality.

The NRC may also inspect vendors, including suppliers of Part 71 and materials licensees, to determine whether they are complying with Part 21. When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments 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 including Part 21. Notices of Violation will be issued for vendors which violate Part 21. Civil penalties will only 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.

SUPPLEMENT I - SEVERITY CATEGORIES

REACTOR OPERATIONS

A. Severity 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 ^{6/} designed to prevent or mitigate a serious safety event not

^{6/} "System" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

being able to perform its intended safety function ^{7/} when actually called upon to work;

3. An accidental criticality; or
4. Release of radioactivity offsite greater than ten (10) times the Technical Specifications limit. ^{8/}

B. Severity 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; or
2. Release of radioactivity offsite greater than five (5) times the Technical Specifications limit.

C. Severity III - Violations involving for example:

1. A significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, such as:

^{7/} "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. For example, considering a BWR's high pressure ECCS capability, the violation must result in complete invalidation of both HPCI and ADS subsystems. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

^{8/} The Technical Specification limit as used in this Supplement (Items A.4, B.2 and C.5) does not apply to the instantaneous release limit.

- 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 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);
 - 3. Dereliction of duty on the part of personnel involved in licensed activities;
 - 4. Changes in reactor parameters which cause unanticipated reductions in margins of safety;
 - 5. Release of radioactivity offsite greater than the Technical Specifications limit;
 - 6. A significant failure to meet the requirements of 10 CFR 50.59, including a failure such that a required license amendment was not sought; or

7. Licensee failure to conduct adequate oversight of vendors resulting in the use of products or services which are of defective or indeterminate quality and which have safety significance.

D. Severity IV - Violations involving for example:

1. A less significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, 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. Failure to meet the requirements of 10 CFR 50.59 that does not result in a Severity Level I, II, or III violation;

3. Failure to meet regulatory requirements that have more than minor safety or environmental significance; or

4. Failure to make a required Licensee Event Report.

E. Severity Level V - Violations that have minor safety or environmental significance.

SUPPLEMENT II - SEVERITY CATEGORIES

PART 50 FACILITY CONSTRUCTION

- A. Severity I - Violations involving a structure or system that is completed ^{9/} in such a manner that it would not have satisfied its intended safety related purpose.
- B. Severity II - Violations involving for example:
1. A breakdown in the quality assurance program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). Such 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 III - Violations involving for example:

^{9/} "Completed" means completion of construction including review and acceptance by the construction QA organization.

1. A deficiency in a licensee quality assurance program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). Such 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. Failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or
 3. Failure to make a required 10 CFR 50.55(e) report.
- D. Severity 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.
- E. Severity V - Violations that have minor safety or environmental significance.

SUPPLEMENT III - SEVERITY CATEGORIES

SAFEGUARDS

- A. Severity I - Violations involving for example:

1. An act of radiological sabotage or actual theft, loss, or diversion of a formula quantity of special nuclear material 10/ in which the security system did not function as required; or
2. Actual undetected entry of an unauthorized individual 11/ into a vital area 12/ from outside the protected area who represents a threat.

B. Severity II - Violations involving for example:

1. Actual theft, loss or diversion of special nuclear material of moderate strategic significance 13/ in which the security system did not function as required;
2. Failure or inability to control access such that an unauthorized individual could easily gain undetected access 14/ into a vital area from outside the protected area; or

10/ See 10 CFR 73.2(bb).

11/ An unauthorized individual is someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

12/ The phrase "vital area" includes vital areas, material access areas, and controlled access areas.

13/ See 10 CFR 73.2(x).

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

3. Failure to have a security system designed or used to prevent the theft, loss, or diversion of SNM of moderate strategic significance or greater amounts or acts of radiological sabotage.

C. Severity III - Violations involving for example:

1. Failure to conduct an adequate search at the access control point that results in the introduction to the protected area of items that may be useful in radiological sabotage or theft of SNM;
2. Failure or inability to control access such that an unauthorized individual could easily gain undetected access into a vital area from inside the protected area or to the protected area from outside the protected area;
3. Significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of SNM or radiological sabotage;
4. Failure to properly secure or protect classified or other sensitive safeguards information which would significantly assist an individual in an act of radiological sabotage or theft of special nuclear material;
5. Significant failure to take compensatory measures for a known security situation that could easily allow unauthorized and undetected access to a protected or vital area;

6. Significant failure to respond to a suspected event in either a timely manner or with an adequate response force; or
7. Breakdown in the security system involving a number of violations that are related or, if isolated, that are recurring violations (e.g., relating to poor management, inadequate maintenance practices, or training).

D. Severity IV - Violations involving for example:

1. Failure of a safeguards system designed or used to prevent or detect the theft, loss, or diversion of SNM or radiological sabotage;
2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;
3. Failure to implement 10 CFR Parts 25 and 95 and information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;
4. Failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71(c) and (d);
5. Failure to conduct a proper search at the access control point;

6. Failure to properly secure or protect classified or other sensitive safeguards information which would not significantly assist an individual in an act of radiological sabotage or theft of special nuclear material;
 7. Failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area or from the protected area into a vital area but which was not easily exploitable;
 8. Inadequate compensatory measures for a known security situation that could allow unauthorized and undetected access;
 9. Failure to properly test a security system; or
 10. Other violations that have more than minor safeguards significance.
- E. Severity V - Violations that have minor safeguards significance such as:
1. Isolated failure to log a security event in accordance with 10 CFR 73.71(c); or
 2. Other violations that have minor safeguards significance.

SUPPLEMENT IV - SEVERITY CATEGORIES

HEALTH PHYSICS 10 CFR PART 20 15/

A. Severity I - Violations involving for example:

1. Single exposure of a worker in excess of 25 rems of radiation to the whole body, 150 rems to the skin of the whole body, or 375 rems to the feet, ankles, hands, or forearms;
2. Annual whole body exposure of a member of the public in excess of 2.5 rems of radiation;
3. Release of radioactive material to an unrestricted area in excess of ten times the limits of 10 CFR 20.106;
4. Disposal of licensed material in quantities or concentrations in excess of ten times the limits of 10 CFR 20.303; or
5. Exposure of a worker in restricted areas of ten times the limits of 10 CFR 20.103.

B. Severity II - Violations involving for example:

15/ Personnel overexposures and associated violations, incurred during a lifesaving effort, will be treated on a case-by-case basis.

1. Single exposure of a worker in excess of 5 rems of radiation to the whole body, 30 rems to the skin of the whole body, or 75 rems to the feet, ankles, hands or forearms;
2. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;
3. Release of radioactive material to an unrestricted area in excess of five times the limits of 10 CFR 20.106;
4. Failure to make an immediate notification as required by 10 CFR 20.403(a)(1) and 10 CFR 20.403(a)(2);
5. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.303; or
6. Exposure of a worker in restricted areas in excess of five times the limits of 10 CFR 20.103.

C. Severity III - Violations involving for example:

1. Single exposure of a worker in excess of 3 rems of radiation to the whole body, 7.5 rems to the skin of the whole body, or 18.75 rems to the feet, ankles, hands or forearms;

2. A radiation level in an unrestricted area such that an individual could receive greater than 100 millirem in a one hour period or 500 millirem in any seven consecutive days;
3. Failure to make a 24-hour notification as required by 10 CFR 20.403(b) or an immediate notification required by 10 CFR 20.402(a);
4. Substantial potential for an exposure or release in excess of 10 CFR 20 whether or not such exposure or release occurs (e.g., entry into high radiation areas, such as under reactor vessels or in the vicinity of exposed radiographic sources, without having performed an adequate survey, operation of a radiation facility with a nonfunctioning interlock system);
5. Release of radioactive material to an unrestricted area in excess of the limits of 10 CFR 20.106;
6. Improper disposal of licensed material not covered in Severity Levels I or II;
7. Exposure of a worker in restricted areas in excess of the limits of 10 CFR 20.103;
8. Release for unrestricted use of contaminated or radioactive material or equipment which poses a realistic potential for significant exposure to members of the public, or which reflects a programmatic (rather than isolated) weakness in the radiation control program;

9. Cumulative worker exposure above regulatory limits when such cumulative exposure reflects a programmatic, rather than an isolated weakness in radiation protection;
10. Conduct of licensee activities by a technically unqualified person; or
11. Significant failure to control licensed material.

D. Severity IV - Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.101 not constituting Severity Level I, II, or III violations;
2. A radiation level in an unrestricted area such that an individual could receive greater than 2 millirem in a one-hour period or 100 millirem in any seven consecutive days;
3. Failure to make a 30-day notification required by 10 CFR 20.405;
4. Failure to make a followup written report as required by 10 CFR 20.402(b), 20.408, and 20.409; or
5. Any other matter that has more than minor safety or environmental significance.

E. Severity V - Violations that have minor safety or environmental significance.

SUPPLEMENT V - SEVERITY CATEGORIES

TRANSPORTATION 16/

A. Severity I - Violations of NRC transportation requirements involving for example:

1. Annual whole body radiation exposure of a member of the public in excess of 2.5 rems of radiation;
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 II - Violations of NRC transportation requirements involving for example:

1. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;
2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;

16/ 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.

3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or
4. Failure to make required initial notifications associated with Severity Level I or II violations.

C. Severity III - Violations of NRC transportation requirements involving for example:

1. Surface contamination in excess of five but not more than 10 times the NRC limit; or
2. External radiation in excess of one but not more than five times the NRC limit; or
3. Any noncompliance with labelling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:
 - a. Significant failure to identify the type, quantity, or form of material;
 - b. Failure of the carrier or recipient to exercise adequate controls; or
 - c. Substantial potential for personnel exposure or contamination, or improper transfer of material; or

4. Failure to make required initial notification associated with Severity Level III violations.

D. Severity IV - Violations of NRC transportation requirements involving for example:

1. 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. Failure to register as an authorized user of an NRC-Certified Transport packages;
4. Noncompliance with shipping papers, marking, labeling, placarding packaging or loading not amounting to a Severity Level I, II, or III violation;
5. Failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;
6. 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.

- E. Severity V - Violations that have minor safety or environmental significance.

SUPPLEMENT VI - SEVERITY CATEGORIES

FUEL CYCLE AND MATERIALS OPERATIONS

A. Severity 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; or
3. A nuclear criticality accident.

B. Severity II - Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license; or
2. A system designed to prevent or mitigate a serious safety event being inoperable.

C. Severity III - Violations involving for example:

1. Failure to control access to licensed materials for radiation 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 person;
5. Radiation levels, contamination levels, or releases that exceed the limits specified in the license;
6. Medical therapeutic misadministration or the failure to report such a misadministration; or
7. Multiple errors of the same or similar root cause that results in diagnostic misadministrations over the inspection period, or a recurrent violation from the previous inspection period that results in a diagnostic misadministration.

D. Severity IV - Violations involving for example:

1. 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; or
3. Medical diagnostic misadministration or a failure to report such a misadministration.

E. Severity V - Violations that have minor safety or environmental significance.

SUPPLEMENT VII - SEVERITY CATEGORIES

MISCELLANEOUS MATTERS

A. Severity I - Violations involving for example:

1. Inaccurate or incomplete information ^{17/} which 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.

^{17/} In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference also should be made to the guidance in Section VI.

2. Incomplete or inaccurate information which the NRC requires be kept by a licensee which 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 which 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 which 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; or

5. A knowing and intentional failure to provide the notice required by Part 21.

B. Severity II - Violations involving for example:

1. Inaccurate or incomplete information which 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 which 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. Action by plant management above first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee; or
5. A failure to provide the notice required by Part 21.

C. Severity III - Violations involving for example:

1. Incomplete or inaccurate information which 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 which the NRC requires be kept by a licensee which 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. Failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;
4. Action by first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee; or
5. Inadequate review or failure to review such that, if an appropriate review had been made as required, a Part 21 report would have been made.

D. Severity IV - Violations involving for example:

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

2. Information which the NRC requires be kept by a licensee and which is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation; or
3. Inadequate review or failure to review under Part 21 or other procedural violations associated with Part 21 with more than minor safety significance.

E. Severity V - Violations of minor procedural requirements of Part 21.

1. Incomplete or inaccurate information which is provided to the Commission and the incompleteness or inaccuracy is of minor significance;
2. Information which the NRC requires be kept by a licensee which is incomplete or inaccurate and the incompleteness or inaccuracy is of minor significance; or
3. Minor procedural requirements of Part 21.

SUPPLEMENT VIII - SEVERITY CATEGORIES

EMERGENCY PREPAREDNESS

A. Severity 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 II - Violations involving for example:

1. In a site area 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. Licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. Severity 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); or
2. Licensee failure to meet or implement one emergency planning standard involving assessment or notification.

D. Severity IV - Violations involving for example:

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

E. Severity V - Violations that have minor safety or environmental significance.

Dated at Rockville, MD, this day of 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

ENCLOSURE 2

**10 CFR PART 2, APPENDIX C
COMPARATIVE TEXT**

APPENDIX C - GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission and its staff in initiating enforcement actions, and of presiding officers, the Atomic Safety and Licensing Appeal Boards, and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the public health and safety, the common defense and security, and the environment.^{1/} This statement of general policy and procedure is published in the Code of Federal Regulations to provide widespread dissemination of the Commissions Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as is appropriate under the circumstances of a particular case.

I. INTRODUCTION AND PURPOSE

The purpose of the NRC enforcement program is to promote and protect the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment by:

- . Ensuring compliance with NRC regulations and license conditions;
- . Obtaining prompt correction of violations and adverse quality conditions which may affect safety;
- . Deterring future violations and occurrences of conditions adverse to quality; and

^{1/} Antitrust enforcement matters will be dealt with on a case-by-case basis.

- Encouraging improvement of licensee and vendor 1a/ performance, and by example, that of industry, including the prompt identification and reporting of potential safety problems.

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

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 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 NRC to revoke

1a/ The term "vendor" means a supplier of products or services to be used in an NRC-licensed facility or activity.

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 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 NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

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

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(c) 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 appropriate NRC Office Director initiates the civil penalty process by issuing a notice of violation and proposed imposition of a civil penalty. The licensee is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the licensee's response, the Director may mitigate, remit, or impose the civil penalty. An opportunity is provided for a hearing if a civil penalty is imposed.

The procedure for issuing an order to show cause why a license should not be modified, suspended, or revoked or why such other action should not be taken is set forth in 10 CFR 2.202. The mechanism for modifying a license by order is set forth in 10 CFR 2.204. These sections of Part 2 provide an opportunity for a hearing to the affected licensee. However, the NRC is authorized to make orders immediately effective if the public health, safety or interest so requires or, in the case of an order to show cause, if the alleged violation is willful.

III. SEVERITY OF VIOLATIONS

Regulatory requirements ^{2/} have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process. Consequently, violations are categorized in terms of five 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.

^{2/} 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 not directly covered by one of the above listed areas, e.g., export license activities, will be placed in the activity area most suitable in light of the particular violation involved. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level V 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 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. Severity Level V violations are of minor safety or environmental concern.

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 Reactor Construction. While examples are provided in Supplements I through VIII for determining the appropriate severity level for violations in each of the eight activity areas, the examples are neither exhaustive nor controlling.

These examples do not create new requirements. Each is designed to illustrate the significance which 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.

In each case, the severity of a violation will be characterized at the level best suited to the significance of the particular violation.

In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

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 here 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 of the person involved in the violation (e.g., first-line supervisor or senior manager), the significance of any underlying violation, the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness), and the economic 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.

The NRC expects licensees to provide full, complete, timely, and accurate 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. 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 which it failed to report. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter.

IV. ENFORCEMENT CONFERENCES

Whenever the NRC has learned of the existence of a potential violation for which a civil penalty or other escalated enforcement action may be warranted, or recurring nonconformance on the part of a vendor, the NRC will normally hold an enforcement conference with the licensee or vendor prior to taking enforcement action. The NRC may also elect to hold an enforcement conference for other violations, e.g., Severity Level IV violation which, if repeated, could lead to escalated enforcement action. The purpose of the enforcement conference is to (1) discuss the violations or nonconformance, their significance and causes, and the licensee's or vendor's corrective actions, (2) determine whether there are any aggravating or mitigating circumstances, and (3) obtain other information which will help determine the appropriate enforcement action.

In addition, during the enforcement conference, the licensee or vendor will be given an opportunity to explain to the NRC what corrective actions (if any) were taken or will be taken following discovery of the potential violation or nonconformance. Licensees or vendors will be told when a meeting is an enforcement conference. Enforcement conferences will not normally be open to the public.

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 modifying, suspending, or revoking a license, will be taken prior to the enforcement conference. In such cases, an enforcement conference may be held after the escalated enforcement action is taken.

V. ENFORCEMENT ACTIONS

This section describes the enforcement sanctions available to NRC and specifies the conditions under which each may be used. The basic sanctions are notices of violation, civil penalties, and orders of various types. Additionally, related administrative mechanisms such as bulletins and confirmatory action letters, notices of nonconformance and notices of deviation are used to supplement the enforcement program. In selecting the enforcement sanctions to be applied, NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters. [With very limited exceptions,] Usually whenever a violation of NRC requirements 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, action by an NRC regional office is appropriate in the form of a Notice of Violation requiring a formal response from the recipient describing its corrective actions. In situations involving nonconformance on the part of vendor, a Notice of Nonconformance will be issued. The relatively small number of cases involving elevated enforcement action receives substantial attention by the public, and may have significant impact on the licensee's operation.

These elevated enforcement actions include civil penalties; orders modifying, suspending or revoking licenses; or orders to cease and desist from designated activities.

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 normally requires the recipient to provide a written statement describing (1) corrective steps which have been taken and the results achieved; (2) corrective steps which will be taken to prevent recurrence; and (3) the date when full compliance will be achieved. NRC may require responses to notices of violation to be under oath. Normally, responses under oath will be required only in connection with civil penalties and orders.

NRC uses the notice of violation as the standard method for formalizing the existence of a violation. A notice of violation is normally the only enforcement action taken, except in cases where the criteria for civil penalties and orders, as set forth in Sections V.B and V.C, respectively, are met. In such cases, the notice of violation will be issued in conjunction with the elevated actions.

However, violation findings warranting the exercise of discretion under Section V.G.1 will generally not result in a Notice of Violation. In addition, for isolated Severity Level V violations, a notice of violation normally will not be issued regardless of who identifies the violation provided that the licensee has initiated appropriate corrective action before the inspection ends. In these situations, a formal response from

the licensee is not required and the inspection report or official field notes serves to document the violations and the corrective actions.
However, a notice of violation will normally be issued for willful violations, if past corrective actions for similar violations have not been sufficient to prevent recurrence, or if the circumstances warrant increasing the severity of Level V violations to a higher severity level.

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 (a) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders, (b) any requirement for which a license may be revoked, or (c) reporting requirements under Section 206 of the Energy Reorganization Act. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations.

Civil penalties are [imposed] proposed absent mitigating circumstances for Severity Level I and II violations, are considered for Severity Level III violations, and may be imposed for Severity Level IV violations that are

similar ^{3/} to previous violations for which the licensee did not take effective corrective action.

In applying this guidance for Severity Level III violations, NRC may, notwithstanding the mitigating and escalating factors in this section, refrain from proposing a civil penalty for violations that warrant the exercise of discretion under Section V.G. As to Severity Level IV violations, NRC normally considers civil penalties only for similar Severity Level IV violations that occur after the date of the last inspection or within two years, whichever period is greater.

Civil penalties will normally be assessed for knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act, and for any willful violation of any Commission requirement including those at any severity level.

NRC imposes different levels of penalties for different severity level violations and different classes of licensees. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs. 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

^{3/} The word "similar," as used in this policy, refers to those violations which could have been reasonably expected to have been prevented by the licensee's corrective action for the previous violation.

civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to 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 such penalties take into account a licensee's "ability to pay." In determining the amounts of civil penalties for licensees for whom the tables do not reflect the ability to pay, NRC will consider as necessary an increase or decrease on a case-by-case basis.

NRC attaches great importance to comprehensive licensee programs for detection, correction, and reporting of problems that may constitute, or lead to, violation of regulatory requirements. This is emphasized by giving credit for effective licensee audit programs when licensees find, correct, and report problems expeditiously and effectively. To encourage licensee self-identification and correction of violations and to avoid potential concealment of problems of safety significance, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations which are identified, reported (if required), and effectively corrected by the licensee.

On the other hand, ineffective licensee programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant NRC-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, NRC intends to apply its full enforcement authority where such action is warranted, including issuing appropriate orders and assessing civil penalties for continuing violations on a per day basis, up to the

statutory limit of \$100,000 per violation, per day. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of such involvement may not be used to mitigate a civil penalty.

Allowance of mitigation could encourage lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

NRC reviews each proposed civil penalty case on its own merits and adjusts the base civil penalty values upward or downward appropriately. Tables 1A and 1B identify the base civil penalty values for different severity levels, activity areas, and classes of licensees. After considering all relevant circumstances, adjustments to these values may be made for the factors described below:

1. [Prompt] Identification and Reporting

Reduction of up to 50% of the base civil penalty shown in Table 1 may be given when a licensee identifies the violation and promptly reports the violation to the NRC. In weighing this factor, consideration will be given to, among other things, [the length of time the violation existed prior to discovery,] the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to [this factor] a reduction in penalty if the licensee does not take immediate action to correct the problem upon discovery. On the other hand, the base penalty may be increased by as much as 50% if the NRC identifies the violation.

2. Corrective Action to Prevent Recurrence

Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the licensee takes corrective action, including actions to prevent recurrence, may [be considered in modifying the civil penalty to be assessed. Unusually prompt and] result in up to a 50% increase or decrease in the base civil penalty shown in Table 1. For example, very extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the timeliness of the corrective action, degree of licensee initiative, and comprehensiveness of the corrective action--such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

3. Past Performance

Reduction by as much as 100% of the base civil penalty shown in Table 1 may be given for prior good performance [in the general area of concern]. On the other hand, the base civil penalty may be increased as much as 100% for prior poor performance [in the general area of concern].

In weighing this factor, consideration will be given to, among other things, the effectiveness of previous corrective action for similar problems, overall performance such as Systematic Assessment

of Licensee Performance (SALP) evaluations for power reactors, and prior [enforcement history] performance including Severity Level IV and V violations in the area of concern. For example, failure to implement previous corrective action for prior similar problems may result in an increase in the civil penalty. For purposes of assessing past performance, violations within the past two years of the inspection at issue or the period within the last two inspections whichever is longer will be considered.

4. Prior Notice of Similar Events

The base civil penalty may be increased as much as [50%] 100% for cases where the licensee had prior knowledge of a potential problem as a result of a licensee [audit] review, [or] a specific NRC or industry notifications or other reasonable indication of a potential problem, and had failed to take effective preventive steps. Prior notice may include findings of NRC, the licensee, or industry made at other facilities of the licensee where it is reasonable to expect the licensee to take action to prevent similar problems at the facility subject to the enforcement action at issue.

5. Multiple Occurrences

The base civil penalty may be increased as much as [50%] 100% where multiple examples of a particular violation are identified during the inspection period.

[The above factors are additive. However, in no instance will a civil penalty for any one violation exceed \$100,000 per day.]

6. Duration

The duration of a violation may also be considered in assessing a civil penalty. A greater civil penalty may be imposed if a violation continues for more than a day. For example:

(1) If a licensee is aware of the existence of a condition which results in an ongoing violation and fails to initiate corrective action, each day the condition existed may be considered as a separate violation and, as such, subject to a separate additional civil penalty.

(2) If a licensee (a) is unaware of a condition resulting in a continuing violation, but clearly should have been aware of the condition or (b) had an opportunity to correct the condition but failed to do so, a separate violation and attendant civil penalty may be considered for each day that the licensee clearly should have been aware of the condition or had an opportunity to correct the condition, but failed to do so.

(3) Alternatively, whether or not a licensee is aware or clearly should have been aware of a violation that continues for more than one day, [the civil penalty imposed for one violation may be increased] the base civil penalty may be increased as much as 100% to reflect the added significance resulting from the duration of the violation.

The above factors are additive. However, in no instance will a civil penalty for any one violation exceed \$100,000 per day.

The Tables and the mitigating factors determine the civil penalties which may be assessed for each violation. However, to focus on the fundamental underlying causes of a problem for which enforcement action appears to be warranted, the cumulative total for all violations which contributed to or were unavoidable consequences of that problem may be based on the amount shown in the table for a problem of that Severity Level, as adjusted. If an evaluation of such multiple violations shows that more than one fundamental problem is involved, each of which, if viewed independently, could lead to civil penalty action by itself, then separate civil penalties may be assessed for each such fundamental problem. In addition, the failure to make a required report of an event requiring such reporting is considered a separate problem and will normally be assessed a separate civil penalty, if the licensee is aware of the matter that should have been reported.

TABLE 1A
BASE CIVIL PENALTIES

	Plant Operations, Const, Health Physics and EP	<u>Safeguards</u>	Transportation Greater than <u>Type A Quantity 1/</u>	Type A Quantity <u>or less 2/</u>
a. Power Reactors	\$100,000	\$100,000	\$100,000	\$5,000
b. Test Reactors	10,000	10,000	10,000	2,000
c. Research Reactors & Critical Facilities	5,000	5,000	5,000	1,000
d. Fuel Fabricators and Industrial Processors <u>3/</u>	25,000	100,000 <u>4/</u>	25,000	5,000
e. Mills and Uranium Conversion Facilities	10,000	--	5,000	2,000
f. Industrial Users of Material <u>5/</u>	10,000	--	5,000	2,000
g. Waste Disposal Licensees	10,000	--	5,000	2,000
h. Academic or Medical Institutions <u>6/</u>	5,000	--	2,500	1,000
i. Other Material Licensees	1,000	--	2,500	1,000

1/ Includes irradiated fuel, high level waste, unirradiated fissile material, and any other quantities requiring Type B packaging.

2/ Includes low specific activity waste (LSA), low level waste, Type A packages, and excepted quantities and articles.

3/ Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

4/ This amount refers to Category 1 licensees (as defined in 10 CFR 73.2 (bb)). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of \$50,000.

5/ Includes industrial radiographers, nuclear pharmacies, and other industrial users.

6/ This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

TABLE 1B

BASE CIVIL PENALTIES

BASE CIVIL PENALTY AMOUNT	
<u>(% of Amount Listed in Table 1A)</u>	
<u>SEVERITY LEVEL</u>	
I	100%
II	80%
III	50%
IV	15%
V	5%

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 and 2.204). Orders may be issued as set forth below. Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate.

- (1) License Modification Orders are issued when some change in licensee equipment, procedures, 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 a licensee does not respond to a notice of violation where a response was required,
- (d) When a licensee refuses to pay a fee required by 10 CFR Part 170, 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 are typically used to stop an unauthorized activity that has continued after notification by NRC that such activity is unauthorized.

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 cause why the order should not be issued in the proposed manner.

D. ESCALATION OF ENFORCEMENT SANCTIONS

NRC considers violations of Severity Level I, II, or III to be serious. If serious violations occur, NRC will, where necessary, issue orders in conjunction with civil penalties to achieve immediate corrective actions and to deter further recurrence of serious violations. NRC carefully considers the circumstances of each case in selecting and applying the sanction(s) appropriate to the case in accordance with the criteria described in Sections V.B and V.C, above.

Examples of enforcement actions that could be taken for similar Severity Level I, II, or III violations are set forth in Table 2. The actual progression to be used in a particular case will depend on the

circumstances. However, enforcement sanctions will normally escalate for recurring similar violations.

[Normally the progression of enforcement actions for similar violations will be based on violations under a single license. When more than one facility is covered by a single license, the normal progression will be based on similar violations at an individual facility and not on similar violations under the same license. However, it should be noted that under some circumstances, e.g., where there is common control over some facet of facility operations, similar violations may be charged even though the second violation occurred at a different facility or under a different license. For example, a physical security violation at Unit 2 of a dual unit plant that repeats an earlier violation at Unit 1 might be considered similar.]

TABLE 2

EXAMPLES OF PROGRESSION OF ESCALATED ENFORCEMENT ACTIONS FOR SIMILAR VIOLATIONS IN THE SAME ACTIVITY AREA UNDER THE SAME LICENSE

Severity of Violation	Number of similar violations from the date of the last inspection or within the previous two years (whichever period is greater)		
	1st	2nd	3rd
I	a+b	a+b+c	d
II	a	a+b	a+b+c
III		a	a+b

a. Civil penalty

b. Suspension of affected operations until the Office Director is satisfied that there is reasonable assurance that the licensee can operate in compliance with the applicable requirements; or modification of the license, as appropriate.

c. Show cause for modification or revocation of the license, as appropriate.

d. Further action, as appropriate.

E. 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 will normally be taken only when there is little doubt 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, IV or V 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. 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.

Examples of situations which could result in enforcement actions against individuals include, but are not limited to, violations which involve:

- ° Recognizing a violation of procedural requirements and willfully not taking corrective action.
- ° Willfully performing unauthorized bypassing of required reactor safety systems.
- ° Willfully defeating alarms which have safety significance.
- ° Unauthorized abandoning of reactor controls.
- ° Inattention to duty such as sleeping [or] being intoxicated while on duty, or otherwise not meeting requirements for fitness for duty.

- Willfully taking actions that violate TS Limiting Conditions for Operation (enforcement action for a willful violation of 10 CFR 50.54(x) will be taken only if the operator failed to meet the standards of that regulation, i.e., acted unreasonably considering all the relevant circumstances surrounding the emergency.)
- Falsifying records required for NRC regulations or by the facility licensee.
- Willfully failing to take "immediate actions" of emergency procedures.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel.

Any proposed enforcement action against individuals must be done with the concurrence of the Deputy Executive Director for Regional Operations. The opportunity for an Enforcement Conference with the individual will usually be provided.

Examples of sanctions that may be appropriate against NRC-licensed operators are:

- issuance of a letter of reprimand to be placed in the operator's license file,
- issuance of a Notice of Violation, and

- suspension for a specified period, modification, or revocation of the license.

The sanctions are listed in escalating order of significance. ^{4/} The particular sanction to be used should be determined on a case-by-case basis.

In addition, NRC may take enforcement action 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, enforcement action 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 individual, an Order modifying the facility license to require the removal of the individual from all nuclear-related activities for a specified period of time or indefinitely may be appropriate.

F. REOPENING CLOSED ENFORCEMENT ACTIONS

If significant new information is received or obtained by NRC which

^{4/} 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 for violations on "any person." "Person" is broadly defined in Section 115 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.

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 for Regional Operations.

G. EXERCISE OF DISCRETION

[1]. Because the NRC wants to encourage and support licensee initiative for self-identification and correction of problems, NRC may exercise discretion as follows:

1. NRC may refrain from issuing a notice of violation for a violation described in an inspection report or official field notes that meets all of the following criteria:

- a. It was identified by the licensee;
- b. It is normally classified at a [fits in] Severity Level IV or V;
- c. It was reported, if required;
- d. It was or will be corrected, including measures to prevent recurrence, within a reasonable time; and

- e. It was not a willful violation or a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation.
2. The NRC may [also] refrain from issuing a notice of violation or a proposed civil penalty for violations described in an inspection report or official field notes that meet all of the following criteria:
- a. (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 the licensee is forced into an extended shutdown or work stoppage related to generally poor performance over a long period; (ii) the licensee has developed and is aggressively implementing during the shutdown a comprehensive program for problem identification and correction; and (iii) NRC concurrence is needed by the licensee prior to restart;
 - b. Non-willful violations are identified by the licensee [(as opposed to the NRC)] as the result of its comprehensive program, or [the violations are identified] as a result of an employee allegation to the licensee. If NRC identifies the violation, the NRC should determine whether enforcement action is necessary to achieve remedial action;
 - c. The violations are based upon activities of the licensee prior to the events leading to the shutdown; and

- d. The [non-willful] violations would normally not be categorized as higher than Severity Level III violations under the NRC's Enforcement Policy.

3. The NRC may refrain from proposing a civil penalty for a Severity Level III violation not involving an overexposure or release of radioactive material that meets all of the following criteria:

- a. It was identified by the licensee and reported
- b. Comprehensive corrective action has been taken or is well underway within a reasonable time following identification;
- c. It was not a violation that either (i) was reasonably preventable by the licensee's action in response to a previous regulatory concern identified within the past two years of the inspection or since the last two inspections which ever is longer or (ii) reasonably should have been corrected prior to the violation because the licensee had prior notice of the problem involved; and
- d. It was not a willful violation or indicative of a breakdown in management controls.

4. The NRC may refrain from proposing a civil penalty for a Severity Level III violation involving a past problem, such as in engineering, design, or installation, that meets the following criteria:

- a. It was identified by a licensee as a result of a licensee's voluntary formal effort such as a Safety System Functional Inspection, Design Reconstitution Program, or other program that has a defined scope and timetable which is being aggressively implemented and reported;
 - b. Comprehensive corrective action has been taken or is well underway within a reasonable time following identification; and
 - c. It was not likely to be identified by routine licensee efforts such as normal surveillance or QA activities.
5. If the NRC issues an enforcement action for a violation at a Severity Level III violation and as part of the corrective action for that violation, the licensee identifies other examples of the violation with the same root cause, the NRC may refrain from issuing an additional enforcement action. In determining whether to exercise this discretion, the NRC will consider whether the licensee acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the safety significance or character of the regulatory concern arising out of the initial violation.

Notwithstanding [the] paragraphs 2, 3, 4, and 5 above, a civil penalty may be proposed when judgment warrants it on the basis of the circumstances

of the individual case. [in a case] For example, civil penalties may be warranted where multiple Severity Level III violations are discovered or where the violation is willful. [This action would be taken when judgment warrants it on the circumstances of the individual case.] In addition, as provided in Section VII, Responsibilities, the Deputy Executive Director for Regional Operations may refrain from issuing a civil penalty for a Severity Level III 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 significance of the violation, the overall performance of the licensee, and circumstances, if any, that have changed since the violation provided prior notice has been given the Commission. This discretion is expected to be exercised only where application of the normal guidance in the Policy is unwarranted.

H. RELATED ADMINISTRATIVE ACTIONS

In addition to the formal enforcement mechanisms of notices of violation, civil penalties, and orders, NRC also uses administrative mechanisms, such as bulletins, information notices, generic letters, notices of deviation, notices of nonconformance, and confirmatory action letters to supplement its enforcement program. NRC expects licensees and vendors to adhere to any obligations and commitments resulting from these processes and will not hesitate to issue appropriate orders to licensees to make sure that such commitments are met.

- (1) Bulletins, Information Notices, and Generic Letters are written notifications to groups of licensees identifying specific problems and recommending specific actions.

- (2) 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.
- (3) Confirmatory Action Letters are letters confirming a licensee's or a vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.
- (4) Notices of Nonconformance are written notices describing non-licensees' 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.

I. REFERRALS TO 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 for investigation. Referral to the Department of Justice does not preclude the NRC from taking other enforcement action under this General Statement of Policy. However, such actions will be coordinated with the Department of Justice to the extent practicable.

VI. INACCURATE AND INCOMPLETE INFORMATION

A violation of the regulations on submitting complete and accurate 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 III "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. A licensee official for purposes of application of the Enforcement Policy means a first line supervisor or above as well as a licensed individual, radiation safety officer, or a person listed on a license as an authorized user of licensed material. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to such factors 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 citation 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, 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 above.

VII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

In accordance with 10 CFR 2.790, all enforcement actions and licensees' responses are publicly available for inspection. In addition, press

releases are generally issued for civil penalties and orders. In the case of orders and civil penalties related to violations at Severity Level I, II, or III, press releases are issued at the time of the order or the proposed imposition of the civil penalty. Press releases are not normally issued for Notices of Violation.

VIII. RESPONSIBILITIES

The Deputy Executive Director for Regional Operations (DEDRO), as the principal enforcement officer of the NRC, has been delegated the authority to issue notices of violations, civil penalties, and orders. ^{5/} Regional Administrators may also issue notices of violation for Severity Level IV and V violations and may sign notices of violation for Severity Level III violations with no proposed civil penalty and proposed civil penalty actions with the concurrence of the DEDRO. In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, the DEDRO or the Regional Administrator must exercise judgment and discretion 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

^{5/} The Director, Office of Enforcement, acts for the Deputy Executive Director for Regional Operations in the latter's absence or as directed. The Directors of the Offices of Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, and Special Projects have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR, NMSS, and OSP will be confined to actions necessary in the interest of public health and safety. The Director, Office of Administration and Resources Management, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license fees. [It is planned to consider redelegation of some or all of these authorities to the Administrators of the NRC Regional Offices over the next several years.]

penalty and the amount of such penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. 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 civil penalties in amounts greater than 3 times the Severity Level I values shown in Table 1A;
- (3) Any proposed enforcement action that involves a Severity Level I violation;
- (4) Any enforcement action that involves a finding of a material false statement;
- (5) Refraining from taking enforcement action for matters meeting the criteria of Section [V.F.2.] V.G.2.

- (6) Any action the Office Director believes warrants Commission involvement; or
- (7) Any proposed enforcement action on which the Commission asks to be consulted.

IX. VENDOR ENFORCEMENT

The Commission's enforcement policy is also applicable to non-licensees (vendors). 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 are 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 of reactor and materials licensees and Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

The NRC conducts inspections of reactor licensees to determine whether they are ensuring that vendors are meeting their contractual obligations with regard to quality of products or services that could have an adverse effect on safety. As part of the effort of ensuring that licensees fulfill their obligations in this regard, the NRC inspects reactor vendors to determine if they are meeting their obligations. These inspections include examination of the quality assurance programs and their implementation by the vendors through examination of product quality.

The NRC may also inspect vendors, including suppliers of Part 71 and materials licensees, to determine whether they are complying with Part 21. When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments 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 including Part 21. Notices of Violation will be issued for vendors which violate Part 21. Civil penalties will only 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.

SUPPLEMENT I - SEVERITY CATEGORIES

REACTOR OPERATIONS

A. Severity 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 ^{6/} designed to prevent or mitigate a serious safety event not

^{6/} "System" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

being able to perform its intended safety function. ^{7/} when actually called upon to work;

3. An accidental criticality; or
4. Release of radioactivity offsite greater than ten (10) times the Technical Specifications limit. ^{8/}

B. Severity 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; or
2. Release of radioactivity offsite greater than five (5) times the Technical Specifications limit.

C. Severity III - Violations involving for example:

1. A significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, such as:

^{7/} "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. For example, considering a BWR's high pressure ECCS capability, the violation must result in complete invalidation of both HPCI and ADS subsystems. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

^{8/} The Technical Specification limit as used in this Supplement (Items A.4, B.2 and C.5) does not apply to the instantaneous release limit.

- 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 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);
3. Dereliction of duty on the part of personnel involved in licensed activities;
4. Changes in reactor parameters which cause unanticipated reductions in margins of safety;
5. Release of radioactivity offsite greater than the Technical Specifications limit;
6. A significant failure to meet the requirements of 10 CFR 50.59, including a failure such that a required license amendment was not sought; or

7. Licensee failure to conduct adequate oversight of vendors resulting in the use of products or services which are of defective or indeterminate quality and which have safety significance.

D. Severity IV - Violations involving for example:

1. A less significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, 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. Failure to meet the requirements of 10 CFR 50.59 that does not result in a Severity Level I, II, or III violation;
3. Failure to meet regulatory requirements that have more than minor safety or environmental significance; or
4. Failure to make a required Licensee Event Report.

E. Severity Level V - Violations that have minor safety or environmental significance.

SUPPLEMENT II - SEVERITY CATEGORIES

PART 50 FACILITY CONSTRUCTION

- A. Severity I - Violations involving a structure or system that is completed^{9/} in such a manner that it would not have satisfied its intended safety related purpose.
- B. Severity II - Violations involving for example:
1. A breakdown in the quality assurance program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). Such 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 III - Violations involving for example:

^{9/} "Completed" means completion of construction including review and acceptance by the construction QA organization.

1. A deficiency in a licensee quality assurance program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). Such 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. Failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or
 3. Failure to make a required 10 CFR 50.55(e) report.
- D. Severity 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.
- E. Severity V - Violations that have minor safety or environmental significance.

SUPPLEMENT III - SEVERITY CATEGORIES

SAFEGUARDS

- A. Severity I - Violations involving for example:

1. An act of radiological sabotage or actual theft, loss, or diversion of a formula quantity of [strategic] special nuclear material^{10/} [(SSNM)] in which the security system did not function as required;
or
2. Actual undetected entry of an unauthorized individual ^{11/} into a vital area ^{12/} [or material access area] from outside the protected area [(i.e., penetration of both barriers) [that was not detected at the time of entry] who represents a threat [or] .
- [3. Failure to promptly report knowledge of an actual or attempted theft or diversion of SSNM or an act of radiological sabotage.]

B. Severity II - Violations involving for example:

1. Actual theft, loss or diversion of special nuclear material [(SNM)] of moderate strategic significance[; ^{11/} ^{13/} in which the security system did not function as required;

^{10/} See 10 CFR 73.2(bb).

^{11/} An unauthorized individual is someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

^{12/} The phrase "vital area" includes vital areas, material access areas, and controlled access areas.

[^{11/}] ^{13/} See 10 CFR 73.2(x).

2. Failure or inability to control access such that [all three elements of access control (barrier, monitoring, and response) at the protected area or vital area are inadequate or two of three elements are inadequate in both the protected and vital area;] an unauthorized individual could easily gain undetected access ^{14/} into a vital area from outside the protected area; or
- [3. Failure to implement approved compensatory measures when the central and secondary alarm stations are inoperable;]
- [4. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of a formula quantity of SNM from areas of authorized use or storage; or]
- [5.] 3. Failure to [use established transportation] have a security system[s] designed or used to prevent the theft, loss, or diversion of [a formula quantity of] SNM of moderate strategic significance or greater amounts or acts of radiological sabotage.

C. Severity III - Violations involving for example:

- [1. Failure to control access such that two of the three elements of access control at the vital area or protected area barrier are inadequate;]

^{14/} In determining whether access can be easily gained factors such as predictability, identifiability, and ease of passage should be considered.

1. Failure to conduct an adequate search at the access control point that results in the introduction to the protected area of items that may be useful in radiological sabotage or theft of SNM;
- [2. Failure to control access to a transport vehicle or the SNM being transported that does not constitute a Severity I or II violation;]
2. Failure or inability to control access such that an unauthorized individual could easily gain undetected access into a vital area from inside the protected area or to the protected area from outside the protected area;
3. Significant failure [to establish or maintain] of the safeguards systems designed or used to prevent or detect the [unauthorized removal] theft, loss, or diversion of SNM [of moderate strategic significance from areas of authorized use or storage] or radiological sabotage;
- [4. Failure to implement approved compensatory measures when the central (or secondary) alarm station is inoperable;]
- [5. Failure to conduct a proper search at the access control point that results in introduction to the site of firearms, explosives, incendiary devices, or other items which could be used for industrial sabotage; or]

- [6] 4. Failure to properly secure or protect classified or other sensitive safeguards information which would significantly assist an individual in an act of radiological sabotage or theft of special nuclear material[.] ;
5. Significant failure to take compensatory measures for a known security situation that could easily allow unauthorized and undetected access to a protected or vital area;
6. Significant failure to respond to a suspected event in either a timely manner or with an adequate response force; or
7. Breakdown in the security system involving a number of violations that are related or, if isolated, that are recurring violations (e.g., relating to poor management, inadequate maintenance practices, or training).

D. Severity IV - Violations involving for example:

1. Failure [to establish or maintain] of a safeguards system[s] designed or used to prevent or detect the theft, loss, or diversion [unauthorized removal] of SNM [of low strategic significance ^{12/} from areas of authorized use or storage;] or radiological sabotage;

[^{12/} See 10 CFR 73.2(y).]

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

[2] 3. Failure to implement 10 CFR Parts 25 and 95 and information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

4. Failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71(c) and (d);

[3. Failure to control access to a vital area or material access area from inside the protected area or failure to control access to the protected area in that one of the three elements of access control is inadequate;]

5. Failure to conduct a proper search at the access control point;

[4.] 6. Failure to properly secure or protect classified or other sensitive safeguards information which would not significantly assist an individual in an act of radiological sabotage or theft of special nuclear material; [or]

7. Failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area or from the protected area into a vital area but which was not easily exploitable;

[5. Other violations, such as failure to follow an approved security plan, that have more than minor safeguards significance.]

8. Inadequate compensatory measures for a known security situation that could allow unauthorized and undetected access;

9. Failure to properly test a security system; or

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

E. Severity V - Violations that have minor safeguards significance such as:

1. Isolated failure to log a security event in accordance with 10 CFR 73.71(c); or

2. Other violations that have minor safeguards significance.

SUPPLEMENT IV - SEVERITY CATEGORIES

HEALTH PHYSICS 10 CFR PART 20^[13/] ^{15/}

A. Severity I - Violations involving for example:

^[13/] ^{15/} Personnel overexposures and associated violations, incurred during a lifesaving effort, will be treated on a case-by-case basis.

1. Single exposure of a worker in excess of 25 rems of radiation to the whole body, 150 rems to the skin of the whole body, or 375 rems to the feet, ankles, hands, or forearms;
2. Annual whole body exposure of a member of the public in excess of 2.5 rems of radiation;
3. Release of radioactive material to an unrestricted area in excess of ten times the limits of 10 CFR 20.106;
4. Disposal of licensed material in quantities or concentrations in excess of ten times the limits of 10 CFR 20.303; or
5. Exposure of a worker in restricted areas of ten times the limits of 10 CFR 20.103.

B. Severity II - Violations involving for example:

1. Single exposure of a worker in excess of 5 rems of radiation to the whole body, 30 rems to the skin of the whole body, or 75 rems to the feet, ankles, hands or forearms;
2. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;
3. Release of radioactive material to an unrestricted area in excess of five times the limits of 10 CFR 20.106;

4. Failure to make an immediate notification as required by 10 CFR 20.403(a)(1) and 10 CFR 20.403(a)(2);
5. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.303; or
6. Exposure of a worker in restricted areas in excess of five times the limits of 10 CFR 20.103.

C. Severity III - Violations involving for example:

1. Single exposure of a worker in excess of 3 rems of radiation to the whole body, 7.5 rems to the skin of the whole body, or 18.75 rems to the feet, ankles, hands or forearms;
2. A radiation level in an unrestricted area such that an individual could receive greater than 100 millirem in a one hour period or 500 millirem in any seven consecutive days;
3. Failure to make a 24-hour notification as required by 10 CFR 20.403(b) or an immediate notification required by 10 CFR 20.402(a);
4. Substantial potential for an exposure or release in excess of 10 CFR 20 whether or not such exposure or release occurs (e.g., entry into high radiation areas, such as under reactor vessels or in the vicinity of exposed radiographic sources, without having performed an adequate survey, operation of a radiation facility with a nonfunctioning interlock system);

5. Release of radioactive material to an unrestricted area in excess of the limits of 10 CFR 20.106;
6. Improper disposal of licensed material not covered in Severity Levels I or II;
7. Exposure of a worker in restricted areas in excess of the limits of 10 CFR 20.103;
8. Release for unrestricted use of contaminated or radioactive material or equipment which poses a realistic potential for significant exposure to members of the public, or which reflects a programmatic (rather than isolated) weakness in the radiation control program;
9. Cumulative worker exposure above regulatory limits when such cumulative exposure reflects a programmatic, rather than an isolated weakness in radiation protection;
10. Conduct of licensee activities by a technically unqualified person; or
11. Significant failure to control licensed material.

D. Severity IV - Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.101 not constituting Severity Level I, II, or III violations;

2. A radiation level in an unrestricted area such that an individual could receive greater than 2 millirem in a one-hour period or 100 millirem in any seven consecutive days;
3. Failure to make a 30-day notification required by 10 CFR 20.405;
4. Failure to make a followup written report as required by 10 CFR 20.402(b), 20.408, and 20.409; or
5. Any other matter that has more than minor safety or environmental significance.

E. Severity V - Violations that have minor safety or environmental significance.

SUPPLEMENT V - SEVERITY CATEGORIES

TRANSPORTATION[^{14/}] ^{16/}

A. Severity I - Violations of NRC transportation requirements involving for example:

[^{14/}] ^{16/} Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper [(10 CFR 73.20)] and a carrier [(10 CFR 70.20a).] 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. Annual whole body radiation exposure of a member of the public in excess of [0.5] 2.5 rems of radiation; [or]

[2. Breach of package integrity resulting in surface contamination or external radiation levels in excess of ten times the NRC limits.]

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 II - Violations of NRC transportation requirements involving for example:

[1. Breach of package integrity resulting in surface contamination or external radiation levels in excess of NRC requirements;]

[2. Surface contamination or external radiation levels in excess of five times NRC limits that did not result from a breach of package integrity; or]

1. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;

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

[3.] 4. Failure to make required initial notifications associated with
Severity Level I or II violations.

C. Severity III - Violations of NRC transportation requirements involving for
example:

[1. Breach of package integrity;]

1.[2.] Surface contamination [or external radiation levels] in excess
of [,] five but [less than a factor of five above NRC requirements,
that did not result from a breach of package integrity] not more
than 10 times the NRC limit; or

2. External radiation in excess of one but not more than five times the
NRC limit; or

3. Any noncompliance with labelling, placarding, shipping paper,
packaging, loading, or other requirements that could reasonably
result in the following:

a. Significant failure to identify [Improper identification of]
the type, quantity, or form of material;

b. Failure of the carrier or recipient to exercise adequate
controls; or

c. Substantial potential for personnel exposure or contamination,
or improper transfer of material; or

4. Failure to make required initial notification associated with Severity Level III violations.

D. Severity IV - Violations of NRC transportation requirements involving for example:

- [1. Package selection or preparation requirements which do not result in a breach of package integrity or surface contamination or external radiation levels in excess of NRC requirements; or]

1. 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. Failure to register as an authorized user of an NRC-Certified Transport packages;
4. Noncompliance with shipping papers, marking, labeling, placarding packaging or loading not amounting to a Severity Level I, II, or III violation;
5. Failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;

6. Failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or

[2] 7. Other violations that have more than minor safety or environmental significance.

E. Severity V - Violations that have minor safety or environmental significance.

SUPPLEMENT VI - SEVERITY CATEGORIES

FUEL CYCLE AND MATERIALS OPERATIONS

A. Severity I - Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed [ten] 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; or
3. A nuclear criticality accident.

B. Severity II - Violations involving for example:

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

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

C. Severity III - Violations involving for example:

1. Failure to control access to licensed materials for radiation 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 person;
5. Radiation levels, contamination levels, or releases that exceed the limits specified in the license; [or]
6. Medical therapeutic misadministration[s.] or the failure to report such a misadministration; or
7. Multiple errors of the same or similar root cause that results in diagnostic misadministrations over the inspection period, or a recurrent violation from the previous inspection period that results in a diagnostic misadministration.

D. Severity IV - Violations involving for example:

1. 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; or
3. [Failure to report] Medical diagnostic misadministration[s] or a failure to report such a misadministration.

E. Severity V - Violations that have minor safety or environmental significance.

SUPPLEMENT VII - SEVERITY CATEGORIES

MISCELLANEOUS MATTERS

A. Severity I - Violations involving for example:

1. Inaccurate or incomplete information [^{15/}] ^{17/} which 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

[^{15/}] ^{17/} In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference also should be made to the guidance in Section VI.

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 which the NRC requires be kept by a licensee which 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 which 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 which 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; or

5. A knowing and intentional failure to provide the notice required by Part 21.

B. Severity II - Violations involving for example:

1. Inaccurate or incomplete information which 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 which 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. Action by plant management above first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee; or
5. A failure to provide the notice required by Part 21.

C. Severity III - Violations involving for example:

1. Incomplete or inaccurate information which 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 of a formal request for information;

2. Incomplete or inaccurate information which the NRC requires be kept by a licensee which 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. Failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;
4. Action by first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee; or
5. Inadequate review or failure to review such that, if an appropriate review had been made as required, a Part 21 report would have been made.

D. Severity IV - Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance

which is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information which the NRC requires be kept by a licensee and which is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation; or
3. Inadequate review or failure to review under Part 21 or other procedural violations associated with Part 21 with more than minor safety significance.

E. Severity V - Violations of minor procedural requirements of Part 21.

1. Incomplete or inaccurate information which is provided to the Commission and the incompleteness or inaccuracy is of minor significance;
2. Information which the NRC requires be kept by a licensee which is incomplete or inaccurate and the incompleteness or inaccuracy is of minor significance; or
3. Minor procedural requirements of Part 21.

SUPPLEMENT VIII - SEVERITY CATEGORIES

EMERGENCY PREPAREDNESS

A. Severity 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 II - Violations involving for example:

1. In a site area 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. Licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. Severity 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); or

2. Licensee failure to meet or implement one emergency planning standard involving assessment or notification.

D. Severity IV - Violations involving for example:

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

E. Severity V - Violations that have minor safety or environmental significance.

Dated at Rockville, MD, this day of 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.